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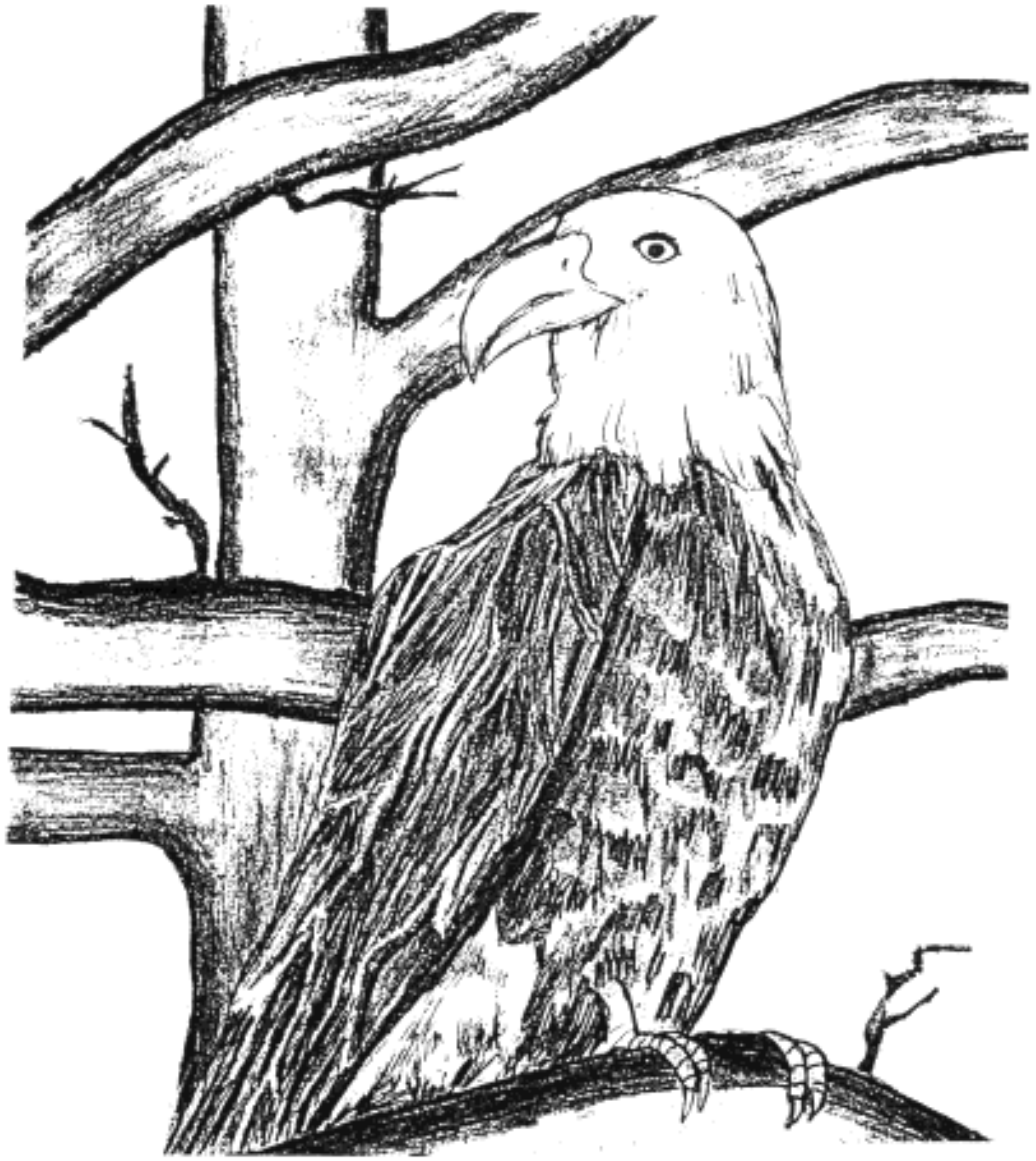

This month's front cover artwork:

Artist: *Jerrod Henderson*

7th Grade

City View ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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ATTORNEY GENERAL

PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-1008. Request from the Honorable Kenneth Armbrister, Texas Senate, P.O. Box 12068, Austin, TX 78711, regarding application of Senate Bill 841, Acts 1997, 75th Legislature, Chapter 1039, to employees of the governing body of a taxing unit. (Request No.1008)

RQ-1009. Request from Mr. Steve Robinson, Executive Director, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, regarding whether House Bill 2324, Acts 1997, 75th Legislature, Regular Session, Chapter 1409, at 5278, et seq., which criminalizes the commercial sale of inmate-made products, applies to the Texas Youth Commission. (Request No. 1009)

RQ-1010. Request from Ms. Eliza May, MS.S.W., Executive Director, Texas Funeral Commission, 510 South Congress, Suite 206 Austin, Texas 78704-1716, regarding meaning of "personal supervision" for purposes of article 4582b, V.T.C.S., with regard to embalming performed by provisional licensees. (Request No. 1010)

RQ-1011. Request from Mr. Tommy V. Smith, Executive Director/ Commissioner, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, regarding whether the Department of Licensing and Regulation may adopt a rule authorizing certain individuals to purchase refrigerant products. (Request No. 1011)

RQ-1012. Request from the Honorable Ron Lewis, Chair, Committee on County Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether Senate Bill 1316, Acts 1997, 75th Legislature, Regular Session, Chapter 695, at 2332, changes the results of Attorney General Letter Opinion Numbers 93-033 (1993) and 94-072 (1994), regarding the service of state employees on the boards of water districts. (Request No. 1012)

RQ-1013. Request from the Honorable Ron Lewis, Chair, Committee on County Affairs, Texas House of Representative, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a municipal utility district may contract with a county for the provision of additional security patrols. (Request No. 1013)

TRD-9714388

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part III. Office of the Attorney General

Chapter 55. Child Support Enforcement

Subchapter H. License Suspension

1 TAC §§55.204, 55.205, 55.209

The Office of the Attorney General proposes amendments to 1 TAC §§55.204(a), 55.205(a) and (g), and 1TAC §55.209(a) concerning administrative procedures in actions to suspend licenses for failure to pay child support. The amendments update the new phone number and physical address of the Office of the Administrative Law Judge, and the physical address of the Administrative Law Section, of which the name is also amended to License Suspension Prosecutor for clarity, for contact and filing purposes. The amendment to §55.209(a) also clarifies the procedure for requesting a telephone hearing to comply with the recent consolidation of the Request for Telephonic Hearing into the Request for Hearing form.

David Vela, IV-D Director, Child Support Division, has determined that for the first five-year period these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Vela also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of the sections as proposed will be the updated phone number and physical addresses for contact and filing purposes, the clarification of the demarcation between the Office of the Administrative Law Judge and the Administrative Law Section (the License Suspension Prosecutor) and the clarification of the procedure for requesting a telephonic hearing. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments may be submitted to Tod L. Adamson, Child Support Division, Administrative Law Section, Office of the Attorney General, 5500 East Oltorf, Room 355, Austin, Texas 78741, or P.O. Box 12017, mailcode 073, Austin, Texas, 78711-2017, (512) 460-6121.

The amended sections are proposed under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support, §232.016, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 232.

The Family Code, Chapter 232, is affected by the new sections.

§55.204. Coordinator

(a) The coordinator may be contacted at : (512) 460-6046 [~~463-2181, extension 5803~~], Office of the Administrative Law Judge, Child Support Division, Office of the Attorney General, 5500 E. Oltorf, Austin, Texas 78741 [~~210 Barton Springs Road, Austin, Texas 78704~~](hand delivery) P.O. Box 12017, Mail Code 039-3, Austin, Texas 78711-2017 (Postal Service delivery).

(b)-(d) (No change.)

§55.205. Initiating a Proceeding

(a) Filing the Petition. The petitioner initiates a proceeding by filing the Petition to Suspend License packet with: Coordinator, Office of the Administrative Law Judge, Child Support Division, Office of the Attorney General, 5500 E. Oltorf, Austin, Texas 78741 [~~210 Barton Springs Road, Austin, Texas 78704~~] (hand delivery) P.O. Box 12017, Mail Code 039-3, Austin, Texas 78711-2017 (Postal Service delivery).

(b)-(f) (No change.)

(g) Title IV-D Agency. If the petitioner is not the Title IV-D agency, the petitioner must provide copies of the packet and all pleadings and documents to: License Suspension Prosecutor [~~Administrative Law Section~~], Child Support Division, Office of the Attorney General, 5500 E. Oltorf, Austin, Texas 78741 [~~210 Barton Springs Road, Austin, Texas 78704~~] (hand delivery) P.O. Box 12017, Mail Code 073, Austin, Texas 78711-2017.

§55.209. Procedure for a Telephone Hearing

(a) The obligor may request a telephone hearing at the time he or she requests a hearing on the petition as provided in [~~. To make such a request, the obligor must complete the Request for Telephone Hearing form and attach it to~~] the Request for Hearing form.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715001
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–2085

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1 TAC §55.217

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Attorney General proposes the repeal of 1 TAC §55.217 because it is duplicative of 1 TAC §55.213 authorizing the IV-D Agency to assess the cost of preparing a record of an agency license suspension proceeding against the appealing party pursuant to Texas Government Code §2001.177.

David Vela, IV-D Director, Child Support Division, has determined that for the first five-year period this repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Vela also has determined that for each year of the first five years this repeal is in effect the public benefit anticipated as a result of the repeal of the section as proposed will be the elimination of a duplicative section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments may be submitted to Tod L. Adamson, Child Support Division, Administrative Law Section, Office of the Attorney General, 5500 East Oltorf, Room 355, Austin, Texas 78741, or P.O. Box 12017, mailcode 073, Austin, Texas, 78711-2017, (512) 460-6121.

The repealed section is proposed under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support, §232.016, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 232.

The Family Code, Chapter 232, is affected by the repealed section.

§55.217. Cost of Preparing Agency Record on Appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715002
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–2085

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Chapter 61. Crime Victims' Compensation

The Office of the Attorney General proposes the repeal of §61.5, amendments to §§61.2, 61.6 - 61.10, 61.13, 61.24, 61.25, 61.31, 61.32, 61.35, 61.38 and new §§61.5 and 61.39 concerning crime victims' compensation. Proposed new §61.5 establishes factors to be considered when determining whether unjust enrichment will result from an award. Proposed new §61,39 establishes procedures and limits for new travel benefits. Amendments to §§61.2, 61.6, 61.10 and 61.25 are proposed to include definitions of and limits on new benefits created by recent legislation and to clarify terms used in the Crime Victims' Compensation Act. Amendments to §61.8 and 61.32 establish limits on fees paid to providers for medical records and health care. Amendments to §§61.7, 61.9, 61.13, 61.24, 61.31 and 61.35 are made to clarify current practices in the indemnity and appeals processes of the division. The amendment to §61.38 is to deny compensation to juvenile felony offenders for the period they are on probation. The repeal of §61.5 is necessary due to legislative changes in the Act.

Christine Taylor, Accounting Director, has determined that for the first five-year period the repeal, new rules and amendments are in effect, there will be fiscal implications on state government as a result of enforcing or administering the sections. For each of the first five years the sections are in effect, the cost to state government will be approximately $5.6 million per year as a result of enforcing or administering the sections. The fiscal impact as a result of amending §61.2 will be less than $20,000 for each of the first five years. The fiscal impact as a result of new §61.5 will be approximately $4.4 million per year for the first five years. The fiscal impact as a result of amending §61.6 will be less than $250,000 per year for the first five years. The fiscal impact of amending §61.8 will be approximately $100,000 to $300,000 per year for each of the first five years. The fiscal impact of amending §61.10 will be approximately $30,000 for the first year, $50,000 for the second year, $55,000 for the third year, $60,000 for the fourth year and $65,000 in the fifth year. The fiscal impact of amending §61.24 will be approximately $25,000 per year for each of the first five years. The fiscal impact of amending §61.32 will be approximately $200,000 for the first year, $300,000 for the second year, $350,000 for the third year, $410,000 for the fourth year and $470,000 in the fifth year. The fiscal impact of new §61.39 will be approximately $50,000 for the first year, $200,000 for the second year, $300,000 for the third year, $400,000 for the fourth year and $500,000 in the fifth year the rule is in effect.

There will be no fiscal implication on local government as a result of enforcing or administering the sections.

Elly Del Prado Dietz, Assistant Attorney General, has determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be the increased availability of benefits for crime victims. For each of the first five years the sections are in effect, small businesses will benefit from reimbursement for preparation of medical records and travel expenses. There will be no economic cost to small businesses or to persons required to comply with the rules.

Comments on the proposal may be submitted to Elly Del Prado Dietz, Crime Victims' Compensation Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments will be accepted for 30 days after publication in the *Texas Register*.

1 TAC §§61.2, 61.5–61.10, 61.13, 61.24, 61.25, 61.31, 61.32, 61.35, 61.38, and 61.39

The new and amended sections are authorized under the Crime Victims' Compensation Act, Texas Code of Criminal Procedure, Article 56.33 which provides the Office of the Attorney General with the authority to promulgate and adopt rules consistent with the Act governing its administration, including rules relating to the method of filing claims and proof of entitlement to compensation.

The new rule and amendments affect the following articles of the code: §§61.2, 61.5, 61.7, 61.8, 61.10, 61.13, 61.24, 61.31, 61.32 and 61.39 affect TEX. CODE CRIM. PROC., Article 56.32(a)(9). §61.2 also affects TEX. CODE CRIM. PROC., Article 56.42(b). §61.5 also affects TEX. CODE CRIM. PROC., Article 56.41(b)(5). §61.6 affects TEX. CODE CRIM. PROC., Article 56.37. §61.7 also affects TEX. CODE CRIM. PROC., Article 56.42(b). §61.9 affects TEX. CODE CRIM. PROC., Article 56.44(d). §61.13 also affects TEX. CODE CRIM. PROC., Articles 56.44(a)-(b). §61.25 affects TEX. CODE CRIM. PROC., Article 56.48. §61.35 affects TEX. CODE CRIM. PROC., Articles 56.38, 56.40, 56.47and 56.48. §61.38 affects TEX. CODE CRIM. PROC., Article 56.311.

§61.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

[Another person-The term as used in the Act, Article 56.45 does not include persons related to the claimant within the third degree of affinity or consanguinity; nor does it include purely donative contributors, such as community, civic, or religious organizations.]

Catastrophic-The term as used in the Act, Article 56.42(b), shall mean injuries involving a sustained loss of function, including, but not limited to any of the following conditions: mangling, crushing or amputation of a major portion of an extremity; traumatic injury to the spinal cord that has caused or may cause paralysis; severe burns that require burn center care; or serious head injury, loss of vision in both eyes, or loss of hearing in both ears.

Pecuniary loss-The term as used in the Act, Article 56.32(9)(A) includes [Includes] repair or replacement of medical appliances damaged or stolen as a result of the criminally injurious conduct and the cost of sexual assault forensic examinations. No other property loss is covered. [eyeglasses, corrective lenses, dental devices, and prosthetic devices. It does not include lost or stolen property.]

Resident-The term as used in the Act, Article 56.32 includes a person who is in Texas with the intent to establish a permanent presence within the state. A person who is in Texas in pursuit of temporary business, recreational activities or whose presence in Texas is of a transient nature is not a "resident of this state" for purposes of the Act. A person resides in Texas if they occupy a dwelling and maintain an ongoing physical presence within Texas.

Total and Permanent Disability-The term as used in the Act, Article 56.42(b) means that the victim is disabled from performing the usual tasks of a worker to such an extent that the victim cannot maintain employment.

§61.5 Unjust Enrichment.

Pursuant to Articles 56.32(a)(9)(E) and Article 56.41(b)(5), the following factors shall be considered when determining whether unjust enrichment will result from an award:

(1) whether the offender has access to any cash payment coming into the household on behalf of the victim;

(2) whether the award is essential to the well-being of the victim and other innocent and dependent family members;

(3) the amount of living expenses paid by the offender before and during the pendency of the claim;

(4) whether any portion of the award will be used directly by the offender for living expenses; and

(5) whether the enrichment is inconsequential or minimal. Whenever possible, payments to third party providers shall be made to prevent awards intended for victim losses to be used by or on behalf of the offender.

§61.6. Filing of Application.

In determining the time period for the victim or claimant's filing of an application, the chief will consider the three [one] year period to begin with the last known event which constituted the criminally injurious conduct for which the compensation is sought. For crimes occurring on or after September 1, 1985, the limitation period will not include the period of mental or physical incapacity which reasonably prevented the victim or claimant from filing an application for compensation according to the Act, Article 56.37. It is the victim's or claimant's responsibility to provide written, medically documented evidence of such mental or physical incapacity.

§61.7. Loss of Earnings.

The chief shall determine an award for actual loss of earnings and the anticipated loss of future earnings as follows.

(1)-(3) (No change.)

(4) Lost wages or support shall be paid upon verification of reported income by the employer or, if self-employed, based on reported income to the Internal Revenue Service, if reporting is required by law. [No award for actual loss of past earnings and anticipated loss of future earnings may exceed the limits prescribed in the Act, Article 56.42(a)(1)(A).]

§61.8. Medical Reports.

The victim shall file current medical reports outlining treatment, diagnosis, and prognosis, including estimate of any disability or physical impairment setting forth the victim's ability to be gainfully employed. The chief may require reports for psychiatric care or counseling as deemed necessary to verify treatment and reasonableness thereof. Costs of medical reports and copies shall be reimbursed according to the Texas Workers Compensation Commission rules regarding medical reports.

§61.9. Payment of Bills.

All bills rendered for medical care, chiropractic care, psychiatric and psychological care, and all bills rendered by duly licensed practitioners rendering remedial treatment to the victim/claimant for the condition resulting from the crime, must provide a clear itemization of all prescriptions and incidentals, prescribing same on items furnished. The chief may require that all bills be submitted on approved forms. Pursuant to the Act, Article 56.44(d) bills will be paid in the best interest of the victim or claimant as determined by the Chief.

§61.10 Limits on Compensation.

(a) The [In addition to the rates established under the Act, the]following limits for the provision of services and the reimbursement of losses are deemed to be an amount reasonably incurred under the Act, Article 56.32(9):

(1) (No change.)

(2) loss of earnings and loss of support to a dependent are limited to $500[$400] per week;

(3) care of dependents or minor children is limited to care provided by a licensed care provider at a rate of $100 per week per dependent or child;

(4)-(5) (No change.)

(b) (No change.)

§61.13. Lump Sum Payments.

The claimant may apply for lump sum payment of anticipated loss of future earnings by filing with the Office of the Attorney General a written request [an affidavit] setting forth the specific reasons why payment in a lump sum would be beneficial and why the failure to lump sum the payments would be detrimental. Allowable expenses incurred after the award will be paid in installments.

§61.24. Collateral Sources.

If the victim or claimant fails to take advantage of a collateral source of benefits readily available to the victim or claimant or reimbursable to the victim or claimant for all or a portion of a pecuniary loss, the chief may [shall] reduce or deny an award to the extent of the collateral source. In this subsection, "collateral source" has the meaning specified in the Act, Article 56.32 , and it does not include purely donative contributions. [.]

§61.25. Closing Claims.

A claim for an award is closed when any of the following conditions occurs:

(1)-(3) (No change.)

(4) the 40 [20] -day time period for appealing the decision of the hearing officer in a final ruling has passed and the victim or claimant has not filed a notice of dissatisfaction with the attorney general as required under the Act, Article 56.48(a).

§61.31. Mental Health Counseling Expenses.

Counseling expenses are limited to 40 sessions or an amount not to exceed $3,000 for services rendered by psychiatrists, psychologists, clinical nurse specialists (CNS in psychiatric care), licensed professional counselors, marriage and family therapists and certified social workers-advanced clinical practitioners. Fees and billing procedures per session are to be determined as established by the attorney general [Office of the Attorney General]. Under unusual facts and circumstances, additional sessions may be allowed, but limited to those which are pre-authorized and approved in accordance with general standards of utilization review.

§61.32. Inpatient Psychiatric Care.

Acute inpatient [Inpatient] psychiatric hospitalization care is limited to $600 [$400] per day with a maximum 30-day stay and shall include room, board, medications and therapeutic modalities. [Inpatient psychiatric are includes care at a residential treatment center.] Only admissions made at the direction of a licensed medical doctor [will be payable, but limited to those which are pre-authorized] and approved in accordance with general standards of utilization review will be paid. Under unusual facts and circumstances, [additional] hospitalization exceeding 30 days may be allowed[, but limited to those which are pre-authorized and approved in accordance with general standards of utilization review]. Residential treatment center care is limited to $400 per day for a full day and $200 per day for a partial day program. Psychiatric hospitals and residential treatment centers must be licensed by the proper state licensing authority.

§61.35. Request for Reconsideration, Prehearings and Final Ruling Hearings.

The attorney general may determine that reconsideration of a decision or a hearing is necessary. The victim orclaimant may also request reconsideration of a decision or [may request] a hearing.

(1) General Information.

(A) The attorney general may appoint hearing officers to conduct reconsideration, prehearing conferences and final ruling hearings under this subsection.

(B) Interested persons shall be notified in writing by mail not less than 10 days prior to the date of the prehearing conference or final ruling hearing. The notice of a prehearing conference or final ruling hearing shall include:

(i) a statement of the time, place and nature of the proceeding;

(ii) a statement of the legal authority and jurisdiction under which the proceeding is to be held;

(iii) a reference to the sections of the statute, the administrative rules, and the issues in question; and

(iv) a statement that although legal representation is not necessary, the victim or claimant may retain counsel at their own expense.

(C) The chief may designate the location of the prehearing conference or final ruling hearing. If the victim or claimant's presence is required at the prehearing conference or final ruling hearing, the chief may consider the convenience to the victim or claimant in choosing the location and scheduling of the proceeding.

(D) In any proceeding under this section, the burden of proof is upon the victim or claimant to prove by a preponderance of the evidence that the requirements of the Act are met.

(E) When the chief requires the victim or claimant to appear at a prehearing conference or at the final ruling hearing, the victim or claimant shall appear in person. Failure of the victim or claimant to appear in person or notify the attorney general of the intended absence shall result in the entry of a ruling based upon the available record.

(F) When prehearing conferences or final ruling hearings are conducted, they shall be open to the public, unless the hearing officer or attorney general determines that the prehearing conference, final ruling hearing or a part of either, should be held in private because a criminal suspect has not been apprehended or because it is in the best interest of the victim or claimant.

(2) [1]Reconsideration. [Review] If the victim or claimant is dissatisfied with the decision of the attorney general to award or deny an application or the amount of the award, the victim or claimant may file a request for reconsideration within 60 days of the date of the written notification of the decision to make or deny an award. The request for reconsideration shall be in writing and shall state the reasons why the victim or claimant disagrees with the decision of the attorney general. If the victim or claimant fails to request reconsideration of a decision of the attorney general within 60 days of the date of the written notification to make or deny an award, the decision of the attorney general becomes the final decision of the agency. If the attorney general receives the request for reconsideration later than 60 days after the decision, the attorney general may not grant a reconsideration or prehearing [or hearing] unless the victim or claimant shows good cause. If the attorney general does not find that good cause exists, a final ruling [decision]

shall be entered and the victim or claimant shall be advised of the procedures for judicial review under the Act, Article 56.48.

(3) [~~(2)~~] Prehearing conferences. If the chief authorizes a prehearing conference, the chief may waive the personal appearance by the claimant and may authorize that a hearing officer accept written evidence instead of a personal appearance by the victim or claimant. Prehearing conferences shall be conducted as follows :[~~.~~]

(A) When the chief has waived the personal appearance of the victim or claimant, the hearing officer may rule based upon the record and additional written evidence in the form of reports, statements and affidavits submitted by the claimant. If the victim or claimant fails to submit additional evidence within 60 days of the date of the written notification of a prehearing conference, the hearing officer shall rule based upon the available record. The hearing officer shall notify the victim or claimant in writing of the decision and the reasons for the decision as soon as practicable and advise the victim or claimant in writing of the appeal [~~hearing~~] process if the victim or claimant is dissatisfied with the ruling of the hearing officer.

(B) When the chief requires the personal appearance of the victim or claimant, the hearing officer shall:

(i)-(ii) (No change.)

(iii) allow the victim or claimant to state their position and present witnesses;

(iv)-(v) (No change.)

(vi) notify the victim or claimant in writing of the decision and the reasons for the decision orruling as soon as practicable; and

(vii) advise the victim or claimant in writing of the hearing process in the event the claimant is dissatisfied with the decision or ruling of the hearing officer.

[~~(B) The attorney general may appoint hearing officers to conduct reconsideration, prehearing conferences and hearings under this subsection.~~

[~~(C) Interested persons shall be notified in writing by mail not less than 10 days prior to the date of the prehearing conference or hearing. The notice of a prehearing conference or hearing shall include:~~

[~~(i) a statement of the time, place and nature of the proceeding;~~

[~~(ii) a statement of the legal authority and jurisdiction under which the proceeding is to be held;~~

[~~(iii) a reference to the sections of the statute, the administrative rules, and the issues in question; and~~

[~~(iv) a statement that although legal representation is not necessary, the victim or claimant may retain counsel at their own expense.~~

[~~(D) The chief may designate the location of the prehearing conference or final ruling hearing. If the claimant's presence is required at the prehearing conference or hearing, the chief may consider the convenience to the claimant in choosing the location and scheduling of the proceeding.~~

[~~(E) In any proceeding under this section, the burden of proof is upon the claimant to prove by a preponderance of the evidence that the requirements of the Act are met.~~

[~~(F) When the chief requires the claimant to appear at a prehearing conference or at the hearing, the claimant shall appear in person. Failure of the claimant to appear in person or notify the attorney general of the intended absence shall result in the entry of a decision based upon the available record.~~

[~~(G) When hearings or prehearing conferences are conducted, they shall be open to the public, unless the hearing officer or attorney general determines that the hearing, prehearing conference, or a part of either, should be held in private because a criminal suspect has not been apprehended or because it is in the best interest of the claimant.~~]

(4) [~~(3)~~] Final Ruling hearings. If the victim or claimant is dissatisfied with the decision [~~ruling~~] of the hearing officer at the prehearing conference or upon reconsideration, the claimant may file a written request for a final ruling hearing within 30 days of the date of the written notification of the decision [~~ruling~~]. If the victim or claimant does not request a final ruling hearing within 30 days of the written notification of the hearing officer, the decision [~~ruling~~] of the hearing officer becomes the final decision of the agency. The hearing officer shall conduct the final ruling hearing as follows:

(A) state to all interested persons the statute and administrative rules applicable at the final ruling hearing;

(B) (No change.)

(C) allow the victim or claimant to state their position and present witnesses;

(D)-(E) (No change.)

(F) if appropriate, subpoena witnesses and administer oaths to determine whether and to what extent a victim or claimant qualifies for an award;

(G) cross-examine the claimant or witnesses; and the victim or claimant may cross-examine any witnesses of the attorney general;

(H) determine the pecuniary loss sustained by the victim or claimant and the amount the victim or claimant has been or expects to be compensated from a collateral source;

(I) notify the victim or claimant in writing of the final ruling and the reasons for the ruling as soon as practicable; and

(J) advise the victim or claimant in writing of the process to seek judicial review if the claimant is dissatisfied with the final ruling [~~of the hearing officer~~].

§61.38. Person Convicted of Criminally Injurious Conduct.

The chief shall not make any award to a victim or claimant adjudicated or convicted of a felony involving criminally injurious conduct until the victim or claimant is discharged from probation or has been released from a correctional institution and has been discharged from parole, if any, and has paid in full any restitution, fines, court costs, and fees as ordered by the court.

§61.39. Travel Expenses.

Pursuant to Article 56.32(9)(B), "necessary travel expenses" are limited to those expenses related to subsections (ii) and (iii) of the article.

(1) A victim or claimant may be reimbursed for the necessary and reasonable transportation, meal and lodging expenses and the loss of past or future earnings related to the receipt of medically indicated services; participation in or attendance at investigative, prosecutorial or judicial processes; and any post conviction or post adjudication processes. The term "medically indicated services"

as used in Article 56.32 (9) (B) (ii) and this section means medical treatment, including mental health counseling ordered and provided by a licensed health care provider.

(2) The attorney general may reimburse a victim for transportation expenses only if the transportation is provided by a commercial transportation company. The term "commercial transportation company" means an entity that offers transportation of people or goods to the public in exchange for compensation. The attorney general may reimburse a victim or claimant for the use of the victims' or claimant's personally owned motor vehicle, including reimbursement to a claimant transporting a victim who is physically or legally unable to operate a motor vehicle. The attorney general may reimburse transportation expenses only when the travel one-way exceeds twenty (20) miles.

(3) The attorney general may reimburse a victim or claimant for meals and lodging when the travel one-way exceeds sixty (60) miles. Only lodging provided by a commercial lodging establishment shall be reimbursed. The term "commercial lodging establishment" means a hotel, motel, inn, apartment or similar entity that offers lodging to the public in exchange for compensation.

(4) Reimbursement to a victim or claimant for transportation, meals and lodging may not be paid at a rate that exceeds the maximum rates provided by law to state employees. If no state maximum rate for an expense exists by law, the attorney general may reimburse the victim or claimant at a rate determined to be fair, reasonable and necessary.

(5) A victim or claimant seeking reimbursement shall submit a notarized statement on a form prescribed by the attorney general setting forth the transportation, meal, lodging and work loss necessitated by their travel under this section. The form shall reflect the number of hours or days the travel and attendance made them absent from work, if any, and the mileage using the shortest route between the victim or claimant's home and the travel destination if a personal vehicle is used. The victim or claimant shall submit all receipts of transportation, meals and lodging with the claim form. The form shall be notarized by the victim or claimant and shall contain the signature of the appropriate official in the following manner:

(A) for medically indicated services, the signature of the attending physician or licensed counselor is required.

(B) for attendance at or participation in the investigation of the criminally injurious conduct leading to the claim, the signature of the law enforcement officer requesting the victim or claimant's presence is required.

(C) for attendance at or participation in the prosecution or judicial proceedings of the criminal case forming the basis of the claim, the signature of the district or county attorney, their assistants, or the victim/witness coordinator is required.

(D) for attendance at or participation in post conviction or post adjudication proceedings, the signature of the presiding official is required.

(E) for loss of work, the signature of the victim or claimant's employer is required to verify how much time was lost from work and the rate of pay.

(6) A victim or claimant shall not be reimbursed for travel expenses for attendance at or participation in the prosecution, judicial, post conviction or post adjudication proceedings to the extent the victim or claimant is a nonresident witness whose expenses are reimbursable pursuant to Article 35.27 of the Texas Code of Criminal Procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714999
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 475–4499

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1 TAC §61.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is authorized under the Crime Victims' Compensation Act, Texas Code of Criminal Procedure, Subchapter 56B, Article 56.33 which provides the Office of the Attorney General with the authority to promulgate and adopt rules consistent with the Act governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation.

§61.5. Reporting the Crime

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715000
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 475–4499

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter E. Creation of Eradication Zones

4 TAC §3.110

Editor's Note: Due to a technical error on behalf of the Texas Register, the text of the following proposed rule submitted by the Texas Department of Agriculture was inadvertently omitted from the November 14, 1997, issue of the Texas Register (22 TexReg 11042).

The amendment is proposed under the Texas Agriculture Code, §74.120, which provides the commissioner of agriculture with the authority to adopt rules to carry out the purposes of Chapter 74; §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone; and Senate Bill 1814, 75th Legislature, 1997, §1.27(d), which provides the commissioner of agriculture with the authority to by rule divide

a statutory zone and fairly apportion any debt to each portion of the divided zone.

The codes affected by the proposal are the Texas Agriculture Code, Chapter 74.

§3.110. Southern High Plains Boll Weevil Eradication Zone.

The Southern High Plains Boll Weevil Eradication Zone shall consist of the following area originally included as a part of the Southern High Plains/Caprock Eradication Zone described at the Texas Agriculture Code, §74.1021(e): all of Andrews, Gaines and Yoakum counties; all of Terry County except for all land north of a line 1.25 miles south of the Hockley County line from FM 303 east to Highway 385 and all land north and east of a line with boundaries of County Road 320, Cemetery Road, and a line 5 miles north of Hwy 380 to the Lynn County line; and all of Lynn County except for all land north and east of a line 5 miles north of Hwy 380 that extends from the Terry County line east for 10 miles, then turns south to Hwy 380, and runs east to the intersection of FM 212 before turning south to the Borden County line.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714501
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 15, 1997
For further information, please call: (512) 463-7541

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Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

4 TAC §35.1

The Texas Animal Health Commission proposes an amendment to §35.1, concerning the definitions relating to eradication of brucellosis in cattle. The amendment is being proposed to change the definitions of exempt cattle and test-eligible cattle in other than priority herds in order to standardize vaccination ages of cattle. The amendment is also proposed to add a definition of hold order to distinguish that form of restriction from a quarantine. The amendment is also being proposed to eliminate the definition of test-eligible cattle; that definition was included as a typographical error.

Mr. Victor M. Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. The agency has made a categorical determination that this rule relates to the handling of animals and does not impact private real property rights.

Dr. Max E. Coats, Jr., Acting Executive Director, has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of terminology. There are minimal anticipated economic costs to persons who are required to comply with the rule as proposed as a result of requiring testing on some cattle not currently being tested.

Comments regarding this proposal may be directed to Ms. Tiffany N. Norvell, P.O. Box 12966, Austin, Texas, 78711-2966; or by Email: tiffanyn@tahc.state.tx.us.

The amendment is proposed under the Texas Agriculture Code, Chapter 161, Subchapter C, §161.041 and §161.046 which authorize the Commission to enact rules to eradicate communicable disease, and Chapter 163, Subchapter D, §§161.061 and 163.064 which authorize the Commission to adopt rules relating to vaccination of cattle.

No other statutes, articles, or codes are affected by this proposal.

§35.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly states otherwise.

Exempt Cattle (from testing requirements)–Cattle that have been physically rendered sterile for breeding [~~, and officially vaccinated female cattle of dairy breeds under 20 months of age and of beef breeds under 24 months of age except those officially vaccinated cattle of the ages stated which are parturient or postparturient~~].

Hold Order–A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

[~~Test Eligible Cattle–All cattle 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers, spayed heifers, official calfhood vaccinates of dairy breeds under 20 months of age, and official calfhood vaccinates of beef breeds under 24 months of age (24 months of age is evidenced by the first pair of fully erupted permanent incisor teeth). Official calfhood vaccinates that are parturient (springers) or postparturient are test eligible regardless of age.~~]

Test-Eligible Cattle in other than Priority Herds–All cattle 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers[~~, official calfhood vaccinates of dairy breeds under 20 months of age, and official calfhood vaccinates of beef breeds under 24 months of age (24 months of age as evidenced by the first pair of fully erupted permanent incisor teeth). Official calfhood vaccinates that are parturient (springers) or postparturient are test eligible regardless of age.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714572
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 719-0714

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4 TAC §35.2

The Texas Animal Health Commission proposes an amendment to §35.2, concerning the general requirements relating to eradication of brucellosis in cattle. The amendment is being proposed to standardize vaccination ages of cattle. This action can be taken as a result of the required use of the vaccine RB-

51. The amendment is also proposed to clarify that the hold order, rather than the quarantine, is used when a vaccinated suspect is located at a market and returned to the herd of origin. The amendment is also proposed to require that a hold order be placed on herds with fence line or across the road contact with a quarantined herd unless an epidemiological evaluation determines the hold order is unnecessary. Under the proposed rule, other adjacent or high risk herds may be placed under hold order.

Mr. Victor M. Gonzalez, Assistant Executive Director for Support Services, has determined for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. The agency has made a categorical determination that this rule relates to the handling of animals and does not impact private real property rights.

Dr. Max E. Coats, Jr., Acting Executive Director, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clarification of terminology with hold orders and quarantines and to require the imposition of a hold order on some adjacent herds, thereby reducing the chance of exposing other cattle to brucellosis. There are minimal anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments regarding the proposed amendment may be submitted to Ms. Tiffany N. Norvell, P.O. Box 12966, Austin, Texas 78711-2966; or by Email: tiffanyn@tahc.state.tx.us

The amendment is proposed under the Texas Agriculture Code, Chapter 161, Subchapter C, §161.041 and §161.046 which authorize the Commission to enact rules to eradicate communicable disease, and Chapter 163, Subchapter D, §§161.061 and 161.064 which authorize the Commission to adopt rules relating to vaccination of cattle.

No other statutes, articles, or codes are affected by this proposal.

§35.2. General Requirements.

(a)-(c) (No change.)

(d) Requirements for a herd test.

(1) Test eligibility.

(A) (No change.)

(B) Other than priority herds–All non-exempt cattle 18 months of age and older except steers and spayed heifers[~~, official vaccinates of dairy breeds under 20 months of age, and official calfhood vaccinates of beef breeds under 24 months of age. Official calfhood vaccinates that are parturient or postparturient are test-eligible regardless of age~~].

(2)-(3) (No change.)

(e)-(h) (No change.)

(i) Movement of cattle classified as reactors, exposed or suspects. There shall be no diversion from the permitted destination. When moved, the cattle must be maintained separate and apart from all other classes of livestock in pens reserved for this purpose at livestock markets or trucking facilities. These pens must be thoroughly cleaned and disinfected before reuse.

(1)-(2) (No change.)

(3) Suspects. Suspects will be moved the same as exposed cattle, except a vaccinated suspect(s) at a livestock market in a consignment of otherwise negative cattle (where the suspect is card positive on the presumptive test and negative to supplemental tests) may move as follows: In a single consignment of cattle, which are from a producer's herd of origin, the owner shall either return the vaccinated suspect(s) under hold order [~~quarantine~~] to the herd of origin until the suspect(s) is negative to the card test, declared a stabilized suspect by an epidemiologist after subsequent test(s) conducted in not less than 30 days, or classified as a reactor on a subsequent test; or sell the suspect(s) to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter, identified with the "S" brand. Card negative cattle in this consignment may move from the market unrestricted. Consignments containing a card positive but supplemental negative non vaccinated suspect(s) may move from the market unrestricted.

(j)-(k) (No change.)

(l) Requirements following classification of dairy or a beef animal or a bison as a reactor or a suspect.

(1) The herd of which the reactor or suspect was a part shall be placed under quarantine or hold order. When brucellosis infection is diagnosed in a herd, a quarantine will be placed on the herd. Any herd with fence line or across the road contact with the quarantined herd will be evaluated by a USDA or TAHC epidemiologist who will determine whether the herd should be placed under hold order. Other adjacent or high risk herds may be placed under hold order. [~~An adjacent or high risk herd may be placed under quarantine.~~]

(2) All cattle in the herd except bulls less than 18 months of age, steers, and spayed heifers are included in the quarantine or hold order. Any movement of quarantined cattle shall conform to subsections (h) and (i) of this section concerning identification and movement of reactor, exposed, or suspect cattle. Release of the quarantine will be as described in paragraph (7) of this subsection.

(3)-(7) (No change.)

(m)-(v) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714573
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 719-0714

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Chapter 43. Tuberculosis

Subchapter A. Cattle

4 TAC §43.1

The Texas Animal Health Commission proposes an amendment to §43.1, concerning requirements relating to eradication of tuberculosis in cattle. The amendment is being proposed to enhance the payment of indemnity for tuberculosis reactor cattle. This action can be taken as a result of legislative action effective September 1, 1997. Under the proposed rule, TAHC

will pay up to $250 for each animal classified as a suspect or reactor and $100 for each exposed animal slaughtered as a result of a herd depopulation.

Mr. Victor M. Gonzalez, Assistant Executive Director for Support Services, has determined for the first five-year period the rule is in effect, there will be minimal fiscal implications for state government as a result of enforcing or administering the rule, and none to local government. The agency has made a categorical determination that this rule relates to the handling of animals and does not impact private real property rights.

Dr. Max E. Coats, Jr., Acting Executive Director, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to encourage tuberculosis testing and depopulation of infected herds, thereby enhancing the tuberculosis eradication effort. There are no anticipated increased economic costs to persons who re required to comply with the rule as proposed.

Comments regarding the proposed amendment may be submitted to Ms. Tiffany N. Norvell, P.O. Box 12966, Austin, Texas 78711-2966; or by Email: tiffanyn@tahc.state.tx.us

The amendment is proposed under the Texas Agriculture Code, Chapter 161, Subchapter C, §161.041 and §161.046 which authorize the Commission to enact rules to eradicate tuberculosis, and Chapter 162, §162.008 which authorizes the Commission to adopt rules relating to tuberculosis indemnity.

No other statutes, articles, or codes are affected by this proposal.

§43.1. Cattle (All Dairy and Beef Animals, (genus Bos), and Bison (genus Bison)).

(a)-(n) (No change.)

(o) Indemnification to cattle owners. After said reactors are slaughtered, the owner shall submit to the Texas Animal Health Commission a written statement made by said establishment showing the amount of salvage paid for each animal. [~~The Texas Animal Health Commission shall then submit to the comptroller's department a bill signed and sworn to by said owner in the amount not to exceed one third of the appraised value to said reactors after deducting the amount of salvage received from same. In no case shall the Texas Animal Health Commission approve a bill for a greater amount than $70 in the indemnification of any purebred animal or a greater amount than $35 in the indemnification of a grade animal or any greater amount than is paid said owner by the Animal and Plant Health Inspection Service of the United States Department of Agriculture for the same animal. No owner shall receive indemnification for his tuberculosis reactors unless and until he complies with all provisions of the law and the rules and regulations of the Texas Animal Health Commission governing this subject. No indemnity will be paid on any animal slaughtered which is still in the suspect classification.~~]

(1) Cattle that are slaughtered after September 1, 1995, in compliance with the tuberculosis program or as a result of a response on an official test can be indemnified as follows. Subject to the availability of funds, the Commission will pay the owner the unreimbursed amount determined by deducting the salvage value and the federal indemnity from the appraised value not to exceed:

(A) $250.00 for each animal classified as a suspect or a reactor [~~For each animal slaughtered with no gross lesions $250~~];

(B) $100.00 for each animal slaughtered as a result of a herd depopulation. [~~For each grade animal slaughtered with gross lesions, the lesser of one third the appraised value or $35; and~~]

[~~(C) For each purebred animal slaughtered with gross lesions, the lesser of one third appraised value or $70.~~]

(2)-(4) (No change.)

(p)-(t) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714574
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 719-0714

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Chapter 49. Equine

4 TAC §49.2

The Texas Animal Health Commission proposes an amendment to §49.2, concerning equine, interstate movement requirements. The language is being proposed to authorize equine to enter the state with a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) attached to the Certificate of Veterinary Inspection.

Mr. Victor M. Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. the agency has made a categorical determination that the rule relates to the handling of animals and does not impact private real property rights.

Dr. Max E. Coats, Jr., Acting Executive Director, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to assure equine entering the state have proof of a negative equine infectious anemia test.

Comments regarding the proposed amendment may be submitted to Ms. Tiffany N. Norvell, P.O. Box 12966, Austin, Texas 78711-2966; or by Email: tiffanyn@tahc.state.tx.us

The amendment is proposed under the Texas Agriculture Code, Chapter 161, Subchapter C, §161.041 and §161.046 which authorize the Commission to enact rules to control equine infectious anemia, and Subchapter E §161.081 which authorizes the commission to regulate the movement of animals into Texas.

No other statutes, articles, or codes are affected by this proposal.

§49.2. Interstate Movement Requirements.

(a) Equine infectious anemia (EIA) requirements. All horses, mules, asses, ponies, zebras, and any other equidae must have a negative agar gel immunodiffusion (AGID) test or a negative competitive enzyme-linked immunosorbent assay (CELISA) test for EIA within 12 months prior to entering Texas. The negative test results together with the date of the test and name of the laboratory conducting the test must be shown on the certificate of veterinary inspection. Alternatively, a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) may be attached to the

Certificate of Veterinary Inspection in place of copying information on the Certificate of Veterinary Inspection. Only test results from USDA-approved laboratories are acceptable. Exceptions to these requirements are:

(1)-(3) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714575
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 719-0714

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Chapter 51. Interstate Shows and Fairs

4 TAC §51.4

The Texas Animal Health Commission proposes an amendment to §51.4, concerning interstate shows and fairs, special requirements for entry from areas with vesicular stomatitis. The amendment is being proposed to prohibit the entry of animals from any premise or area under quarantine for vesicular stomatitis and to require the veterinarian completing the Certificate of Veterinary Inspection to verify that the animals have not originated from such a premise or area.

Mr. Victor M. Gonzalez, Assistant Executive Director for Support Services, has determined for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. The agency has made a categorical determination that this rule relates tot he handling of animals and does not impact private real property rights.

Dr. Terry L. Beals, Executive Director, has determined that for the each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a significant decrease on the impact upon unaffected segments of industry, and allows a quarantine to be placed based upon epidemiologcal findings. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments regarding the proposed amendment may be submitted to Ms. Tiffany N. Norvell, P.O. Box 12966, Austin, Texas, 78711-2966; or by Email: tiffanyn@tahc.state.tx.us

The amendment is proposed under the Texas Agriculture Code, Chapter 161, Subchapter C, §§161.041 and 161.046 which authorize the Commission to enact rules to eradicate communicable diseases, and Subchapter D, §161.061 which requires the Commission to establish a quarantine against any area where a communicable disease exists.

No other statutes, articles, or codes are affected by this proposal.

§51.4. Special Requirements for Entry from Areas with Vesicular Stomatitis.

(a) No equine, bovine, porcine, caprine, ovine, or cervidae may enter Texas from a premise or area under quarantine for vesicular stomatitis [another state if vesicular stomatitis has been diagnosed within ten miles of the premise of origin within the last 30 days].

(b) Any equine, bovine, porcine, caprine, ovine, or cervidae entering Texas from a state where vesicular stomatitis has been diagnosed within the last 30 days must be accompanied by a Certificate of Veterinary Inspection with the following statement written by the accredited veterinarian on the Certificate: "The animals represented on this health certificate have not originated from a premise or area under quarantine for vesicular stomatitis." [To the best of my knowledge, all animals identified on this health certificate have been examined and found to be free from vesicular stomatitis. During the past 30 days, they have neither been exposed nor located within ten miles of a premise where vesicular stomatitis has been diagnosed.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714576
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 719-0714

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4 TAC §51.6

The Texas Animal Health Commission proposes a new §51.6, concerning interstate shows and fairs, interstate movement of sheep not known to be infected or exposed to scrapie. The language is being proposed to establish entry requirements for sheep from other states. It would require sheep from states with an active scrapie control and surveillance program to first of all (finewool breeds and sheep entering for grazing or to slaughter or feedlot) accompanied by a health certificate stating that an examination of the herd or premise of origin shows no evidence of exposure to scrapie; or secondly (mediumwool breeds) be accompanied by a health certificate stating that an examination of the herd or premise of origin shows no evidence of exposure to scrapie and listing permanent identification numbers. The proposal would also require sheep from states that do not have an active scrapie control and surveillance program to first of all (breeding sheep) enter with a health certificate and permit into a scrapie control program herd; or secondly (sheep entering for grazing or to slaughter or feedlot) be accompanied by a health certificate stating than an examination of the herd or premise of origin shows no evidence of exposure to scrapie.

Mr. Victor M. Gonzalez, Assistant Executive Director for Support Services, has determined for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. The agency has made a categorical determination that this rule relates to the handling of animals and does not impact private real property rights.

Dr. Max E. Coats, Jr., Acting Executive Director, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to establish entry requirements regarding scrapie, thereby

helping to protect sheep in Texas from exposure to the disease. There are minimal anticipated economic costs to persons who are required to comply with this rule as proposed. These costs would be associated with establishing and maintaining a scrapie control program herd.

Comments regarding the proposed new rule may be submitted to Ms. Tiffany N. Norvell, P.O. Box 12966, Austin, Texas 78711-2966; or by Email: tiffanyn@tahc.state.tx.us.

The new rule is proposed under the Texas Agriculture Code, Chapter 161, Subchapter C, §161.041 and §161.046 which authorizes the Commission to enact rules to control communicable diseases, and Subchapter E §161.081 which authorizes the commission to regulate the movement of animals into Texas.

No other statutes, articles, or codes are affected by this proposal.

§51.6. Interstate Movement of Sheep not Known to be Infected or Exposed to Scrapie.

(a) Requirements for entry of sheep from states with an active scrapie control and surveillance program (state of origin requires that the state animal health official of that state be immediately notified of any suspected or confirmed case of scrapie in that state and requires that sheep and/or goats from infected or source flocks be quarantined).

(1) Breeding sheep

(A) Finewool sheep (Rambouillet, Debroulliet, Delaine, Merino and Targhee). Sheep must be accompanied by a health certificate stating that an examination of the herd and/or premise of origin shows no evidence of exposure to scrapie.

(B) mediumwool breeds and crossbreeds. Sheep must be accompanied by a health certificate listing permanent identification numbers and stating that examination of the herd and/or premise of origin shows no evidence of exposure to scrapie.

(2) Sheep entering for grazing or to slaughter or feedlot. Sheep must be accompanied by a health certificate stating an examination of premise and/or herd of origin shows no evidence of exposure to scrapie. Provided, sheep consigned directly to Federal inspected slaughter facilities and wether lambs have no entry requirements.

(b) Movement of sheep from states with no active scrapie control and surveillance program.

(1) Breeding sheep.

(A) Sheep may enter Texas on a health certificate and permit only into a scrapie control program herd, and the

(B) Texas herd must continue in the program for five years after entry of the sheep.

(2) Sheep entering Texas for grazing, slaughter or to feedlots.

(A) Sheep must be accompanied by a health certificate and entry permit stating that examination of premise and/or herd of origin shows no evidence of exposure to scrapie, provided, sheep consigned directly to federal inspected slaughter facilities have no entry requirements, and

(B) wether lambs have no entry requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714577
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 719-0714

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §§9.20-9.22, 9.29

The Railroad Commission of Texas proposes amendments to §§9.20, 9.21, 9.22, and 9.29, relating to filings required for stationary LP-gas installations; notice of stationary LP-gas installations; objections to proposed stationary LP-gas installations; and application for an exception to a safety rule.

The commission proposes these amendments to clarify the requirements for plats or drawings filed with plans and specifications, to specify a cap on the aggregate water capacity an LP-gas installation may reach without further notice to property owners, and to clarify deadlines for filing objections to proposed LP-gas installations. Specifically, proposed amendments to §9.20(a)(1) add the new explanation for plats or drawings, and a reference to these is added to subsection (e)(1). The addition of the 250-foot diameter in subsection (a)(1)(B) will ensure that the commission receives plats or drawings that accurately represent the proposed LP-gas installation.

The proposed amendments to §9.21 add a cap of 120,000 gallons aggregate water capacity for existing LP-gas installations before notice must be provided to real property owners. An existing LP-gas installation may increase its aggregate water capacity up to 120,000 gallons without having to provide notice to real property owners. Additions to existing installations which will result in an aggregate water capacity of more than 120,000 gallons will require notice as specified in §9.21(a).

Other proposed amendments in §9.22 regard the time period for mailing objections. The current rule requires objections to be mailed to the commission within 18 days of receipt of the notice of the proposed installation; the proposed amendment specifies the objection period to be 18 calendar days from the postmark of the mailed notice. This change should allow the commission to proceed with its review and approval process of a proposed installation more expeditiously, while still providing adequate time for real property owners to respond. In addition, new subsections (b), (c), and (d) are proposed to explain the commission's responsibilities in reviewing objections. Subsection (d) also contains a proposed limit on the number and type of objections that real property owners may file. This will assist in the submission of valid objections and prevent LP-gas applications from being suspended indefinitely while repeated and possibly invalid objections are filed.

A similar amendment is also proposed in §9.29(d)(1) regarding objections to an application for an exception to a safety rule. Again, the commission proposes changing the time period for objections from 18 days from receipt to 18 calendar days from the postmark date. Other proposed nonsubstantive amendments include changes in wording, punctuation, or organization to provide better clarity.

Thomas D. Petru, assistant director, Gas Services Division, LP-Gas Section, has determined that for each year of the first five years the amendments as proposed will be in effect there will be no fiscal implications for state or local governments.

Mr. Petru has also determined that for each year of the first five years the amendments as proposed will be in effect the public benefit anticipated as a result of enforcing the sections will be a clarification of requirements for plats or drawings, and objections to proposed stationary LP-gas installations. The proposed amendment to §9.21(b) will allow LP-gas installations some flexibility to expand storage capacity while still providing for public notice.

There is no anticipated economic cost for the proposals.

Comments on the proposals may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 1468.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

§9.20. Filings Required for Stationary LP-Gas Installations.

(a) Aggregate water capacity of 10,000 gallons or more.

(1) Prior to the installation of any LP-gas container which would result in an aggregate water capacity of 10,000 gallons or more, plans and specifications for the installation must be submitted to the commission with LPG Form 500. Tentative or interim approval must be obtained prior to the setting of the LP-gas container and construction of the LP-gas installation.

(A) Plans and specifications shall include a plat or drawing of the proposed LP-gas installation.

(B) The plat or drawing shall describe the facility's property or a 250-foot diameter (measured from the proposed container's location on the site), whichever is smaller, and include all containers, buildings, structures, geographical or topographical features, or any other features or activities relating to LP-gas which could affect the health, safety and welfare of the general public. The plat or drawing shall include a scale or legend to indicate the distances or measurements described.

(2)-(5) (No change.)

(b)-(d) (No change.)

(e) Review of drawings, plans, reports, specifications, and installations for compliance.

(1) The commission shall examine all drawings, plans, reports, and specifications required by statute or commission regulation to be submitted for approval, including the plat or drawing required in subsection (a)(1) of this section, to determine whether the design, manufacture, construction, or use of the depicted item, system, operations, procedure, or installation complies with the LP-gas safety rules. A determination will also be made whether the subject of the submission poses a threat to the health, safety, and welfare of the general public. If the commission declines administratively to approve the submission, the applicant shall be notified in writing within the required time period of the deficiencies. The applicant may modify the submission and resubmit it for approval within the required time period, or may request a hearing on the matter in accordance with the general rules of practice and procedure of the Railroad Commission of Texas. The subject of the submission shall not be operated or used in LP-gas service in this state until approved by the Railroad Commission of Texas following a hearing.

(2)-(4) (No change.)

§9.21. Notice of Stationary LP-Gas Installations.

(a) When notice of a proposed installation of 10,000 gallons or more aggregate water capacity is required, an applicant [~~a person~~] shall send a copy of [~~an~~] LPG Form 500, [~~an~~] LPG Form 500A, and a plat by certified mail, return receipt requested, to all owners of real property situated within 500 feet of the proposed container location(s) [~~container(s) location~~]. The LPG Form 500 shall be submitted to the commission at the same time the LPG Form 500 and LPG Form 500A are mailed to the real property owners. Notice shall be considered sufficient when the applicant has provided evidence that a complete LPG Form 500, LPG Form 500A, and plat have been sent to all real property owners. The applicant may obtain names [~~Names~~] and addresses of owners [~~may be determined~~] from current county tax rolls. The applicant shall notify owners of real property situated within 500 feet of the proposed container location(s) [~~locations must be notified~~] if the current aggregate water capacity of the installation is more than doubled [~~increased more than once~~] in a 12-month period or if the resulting aggregate water capacity of the installation will be more than 120,000 gallons.

(b) When notice is not required. Unless considered to be in the public interest by the commission, the applicant does not need to notify owners of real property situated within 500 feet of the proposed container location [~~do not need to be notified~~] of an addition to an existing LP-gas facility [~~of 10,000 gallons aggregate water capacity or more,~~] provided the current aggregate water capacity is not more than doubled in a 12-month period; however, if the resulting aggregate water capacity will exceed 120,000 gallons, the applicant shall provide notice as specified in subsection (a) of this section.

(c) (No change.)

§9.22. Objections to Proposed Stationary LP-Gas Installations.

(a) Each owner of real property situated within 500 feet of the proposed location of an LP-gas container(s) of 10,000 gallon aggregate water capacity or more receiving notice shall have 18 calendar days from the date the notice is postmarked [~~was received~~] to file a written [~~an~~] objection[~~, in writing,~~] as described in §9.24(a)(2) of this title (relating to Hearings on Stationary LP-Gas Installations) with the commission. [~~If notice is served by mail, three days shall be added to the time for filing an objection.~~] An objection is not considered filed until it is actually received at the Austin office of the commission.

(b) The commission shall review all objections within 21 calendar days of receipt to determine if they are proper. A proper objection shall be in writing and shall include a statement of facts showing that the proposed installation:

(1) does not comply with the LP-gas safety rules, specifying which rules are violated;

(2) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or

(3) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger.

(c) If the commission deems any objection to be proper, the commission shall call a public hearing as specified in §9.24 of this title (relating to hearings on stationary LP- gas installations).

(d) If the commission determines the objection is incomplete or improper, the commission shall notify the objecting party in writing requesting clarification. For incomplete or improper objections, the commission shall specifically state why the objection is being returned. The objecting party shall have 10 calendar days from the postmark of the commission's letter to file its corrected objection. Clarification of incomplete or improper objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

§9.29 Application for an Exception to a Safety Rule.

(a) [~~Filing.~~] Any person[~~, firm, or corporation~~] may apply for an exception to the provisions of this chapter by filing LPG Form 25 [~~an application for exception with the commission~~].

(b) [~~Form.~~] In lieu of LPG Form 25, the [~~The~~] application or pleading must be typewritten on paper not to exceed 8 1/2 by 11 inches and have an inside margin of at least one inch. Any attached [~~annexed~~] exhibits must be folded to the same size as the pleading itself. The text shall [~~content must~~] be double-spaced and appear on one side of the paper only. [~~In lieu of the typewritten application, an LPG Form 25 may be submitted.~~]

(c) [~~Content.~~] The application shall contain the following:

(1) the section number of any applicable rules [~~a reference, by section number, to the applicable section which serves as the general rule~~];

(2) [~~a statement of~~] the type of relief desired, including [~~i.e.,~~] the exception requested [~~applied for~~] and any information [~~those details~~] which may assist the commission [~~be helpful~~] in comprehending the requested [~~exact nature of the~~] exception;

(3) a concise statement of facts which support the applicant's request [~~ease~~] for the exception, such as the reason [~~e.g., the need~~] for the exception, [~~and the reason for it,~~] the safety aspects of the exception, and the social and/or economic impact of the exception;

(4) for all stationary installations, regardless of size, a description of the acreage and/or address upon which the subject of the exception[~~, if granted,~~] will be located [~~should its location be stationary~~]. The description shall be in writing and shall include: [~~a plat drawing and shall identify the site sufficiently to permit determination of property boundaries, state the ownership of the land, and state under what legal authority the applicant if not the owner, is permitted occupancy;~~]

(A) a plat drawing;

(B) sufficient identification of the site so that determination of property boundaries may be made;

(C) the ownership of the land; and

(D) the legal authority under which the applicant, if not the owner, is permitted occupancy.

(5) the name, business address, and telephone number of the applicant and of the authorized agent, if any;

(6) an original signature[~~,~~] in ink[~~, ~~] by the party filing the application or by the authorized representative;

(7) a list of the names and addresses of all interested parties[~~,~~] as defined in subsection (d) of this section.

(d) Notice of the application for an exception to a safety rule shall include the following:[~~.~~]

(1) The applicant shall send a copy of LPG Form 25 or the typewritten [~~the~~] application by certified mail, return receipt requested, to all affected parties as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form or application is filed with or sent to the commission. The applicant [~~application~~] shall include[~~, in addition to the other requirements,~~] a notice to the affected parties that any objection shall [~~must~~] be filed with the commission within 18 calendar days of postmark [~~receipt~~] of the application. The applicant shall retain all return receipts for inspection by commission personnel, if requested. [~~All return receipts shall be forwarded to the commission. All objections must be filed with the commission within 18 days of receipt of the application.~~]

(2) If [~~In the case of~~] an exception is requested for [~~on~~] a stationary site, affected parties to whom the applicant must give notice shall include[~~,~~] but not be limited to:

(A) persons and businesses owning or occupying property adjacent to the site;

(B) the city council, if the site is within municipal limits; and

(C) the county commission, if the site is not within any municipal limits.

(3) If [~~In the case of~~] an exception is requested for [~~on~~] a nonstationary site, affected parties to whom the applicant must give notice shall include[~~,~~] but not be limited to:

(A) the Texas Department of Public Safety; and

(B) all processed gas loading and unloading facilities utilized by the applicant.

(4) The [~~In the interests of justice, the~~] commission may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any party.

(e) [~~Review.~~] The commission shall review the application within 21 calendar days of receipt of the application. If the commission does not receive any [~~has received no~~] objections from any affected parties as defined in subsection (d) of this section, the commission may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the commission declines [~~administratively~~] to grant the exception, the applicant shall be notified of the reasons and [~~of~~] any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter.

(f) A hearing shall be held when the commission receives proper objections from any affected party, or when the applicant requests one following an administrative denial. To be granted a hearing, the applicant shall file a request for hearing within 14

calendar days of receiving notice of the administrative denial. The commission shall mail the notice of hearing to the applicant and all objecting parties by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing.

(g) Hearings will be held in accordance with the requirements of Texas Gov't Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of this title (relating to the general rules of practice and procedure).

[(f) ~~Hearings.~~]

[~~(1) When held. A hearing will be held when the commission receives objections from any affected party, or when the applicant requests one following an administrative denial. To be granted a hearing the applicant must file a request for hearing within two weeks of receiving notice of the administrative denial.~~]

[(2) ~~Notice.~~]

[~~(A) The commission shall prepare a notice of hearing which shall be mailed to the applicant by certified mail, return receipt requested, not less than 21 days prior to the date of the hearing. A copy of the notice attached to the application shall be posted in a conspicuous place in the commission's office in Austin, not less than 10 days prior to the date of hearing.~~]

[~~(B) The commission shall mail copies of the notice of hearing by certified mail to all objecting parties, return receipt requested, at such time that objecting parties should receive copies at least 21 days prior to the date of hearing.~~]

[~~(3) Hearing procedure. Hearings will be held in accordance with the requirements of the Administrative Procedure and Texas Register Act, and the general rules of practice and procedure of the Railroad Commission of Texas.~~]

(h) [~~(g)~~] Applicants intentionally submitting incorrect or misleading information are subject to penalties [~~Penalties. Intentional misinformation submitted by an applicant or the authorized agent of such applicant shall be punishable as set out~~] in the Texas Natural Resources Code, §91.143, and the filing of incorrect or misleading information shall be grounds for dismissing the application with prejudice.

(i) [~~(h)~~] [~~Finding requirement.~~] After hearing, exceptions to this chapter may be granted by the Railroad Commission of Texas if granting [~~when based on a determination that the grant of~~] the exception will neither imperil nor tend to imperil the health, safety, or welfare of the general public.

(j) [~~(i)~~] [~~Temporary exception.~~] For good cause shown, the commission may grant a temporary exception[~~,~~] not to exceed 30 calendar days[~~,~~] to the examination requirements for representatives and operations supervisors. Good cause shall include[~~,~~] but not be limited to[~~,~~] the death of a sole proprietor or partner, or severe economic hardship. An applicant for a temporary exception must agree to comply with all applicable safety requirements and furnish the commission with evidence that granting the exception will not create a safety hazard or endanger the public.

(k) [~~(j)~~] [~~Application completion deadline.~~] A request [~~If any application~~] for an exception that is inactive for six months after the applicant has been notified by the commission of an incomplete request[~~, such application~~] shall expire. The applicant may resubmit an application request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714671
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–7008

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Chapter 15. Alternative Fuels Research and Education Division

The Railroad Commission of Texas proposes to repeal §§15.1, 15.2, and 15.21-15.27, relating to definitions; loading rack registration; fee on delivery of odorized liquefied petroleum gas (LPG); report and remittance of fees; exemptions; loading rack refunds; commission refund; penalty for failure to report as required; and civil penalties, and simultaneously proposes to adopt new §§15.1, 15.3, 15.5, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.75, 15.80, 15.85, 15.90, 15.95, and 15.100, relating to purpose; general provisions; AFRED forms; definitions; registration of odorizers, odorizer agents, and importers; fee on delivery of odorized LPG; report and remittance of fees; exemptions; odorizer or importer refunds; commission refund; penalty for failure to report as required; civil penalties; records; power of entry; audits and investigations; procedure for compliance with or challenge to audit results; and interpretation and application. The commission is proposing the simultaneous repeal of existing rules and adoption of new rules to permit renumbering and insertion of new rules in a logical sequence and to implement the provisions of Senate Bill 925 (S.B. 925) enacted by the 75th legislature and effective September 1, 1997. The proposed new rules delete and amend some current definitions, and add new ones; provide for new collection mechanisms; and add rules relating to exemptions, refunds, and penalties.

Proposed new §15.1 states the purpose of the rules, proposed new §15.3 states general provisions governing the calculation of deadlines, and proposed new §15.5 lists the forms used for odorizer, odorizer agent, and importer registration, fee reporting and remitting, and exemption and refund requests.

Proposed new §15.41, relating to definitions, has been renumbered from §15.1; the text has been altered to delete definitions for "cargo container," "first sale," "loading rack," and "loading rack operator"; and to add definitions for "AFRED," "continuous movement," "delivery," "director," "importer," "marketer," "means of conveyance," "odorizer," "owner of LPG at time of import," "owner of LPG at time of odorization," "person," "sold and placed into commerce," "supplier," "time of import," and "time of odorization."

Proposed new §15.45, relating to registration of odorizers, odorizer agents, and importers, replaces current §15.2, relating to loading rack registration, which is separately proposed for repeal in its entirety. The proposed new rule declares persons odorizing LPG within the State of Texas or importing odorized LPG into the State of Texas to be subject to this section on the date that the person first odorizes LPG within the State of Texas or imports odorized LPG into the State of Texas, and requires these persons to register within prescribed deadlines using AFRED forms. The proposed new rule also sets out conditions under which odorizers may delegate duties to suppliers.

Proposed new §15.50, fee on delivery of odorized LPG, replaces current §15.21, with amendments to implement the requirements of S.B. 925 assigning collecting, reporting and remitting responsibilities to persons odorizing LPG in Texas or importing odorized LPG into Texas.

Proposed new §15.55, report and remittance of fees, replaces current §15.22; makes the wording consistent with S.B. 925 requirements; and provides an opportunity to submit amended reports for the months of September 1997 through January 1998, without penalty.

Proposed new §15.60, exemptions (an amended version of current §15.23), conforms wording to S.B. 925 language and requirements.

Proposed new §15.65, odorizer or importer refunds, replaces §15.24; the new language conforms to S.B. 925.

Proposed new §15.70, commission refund, is only slightly changed from current §15.25, again to make the wording consistent with that in S.B. 925.

Proposed new §15.75, penalty for failure to report as required, replaces current §15.26 and changes only the term "loading rack operator" to "persons."

Proposed new §15.80, civil penalties, is identical to current §15.27.

Proposed new §15.85, records, requires odorizers and importers to maintain, for a minimum of four years, documentation regarding their operations to enable the commission to determine whether odorizers and importers have remitted the proper AFRED fees due under proposed new §15.50.

Proposed new §15.90, power of entry; audits and investigations, clarifies the commission's authority to enter an office, premises, or place of business of an odorizer or importer to inspect and obtain copies of papers, books, accounts, documents, or other business records, for the purpose of conducting an audit or investigation or enforcing or administering the AFRED program or commission rules.

Proposed new §15.95, procedure for compliance with or challenge to audit results, spells out procedures following a commission audit of an odorizer or importer.

Finally, proposed new §15.100, interpretation and application, explains the commission's interpretation and application of the fee rules in several fact situations, and demonstrates how the commission will determine which entities are responsible for paying and collecting and remitting the fee.

Significant changes made by S.B. 925 include (1) the application of delivery fees to imported LPG; (2) imposition of the fee upon delivery into any means of conveyance to be sold and placed into commerce rather than upon the first sale of odorized LPG delivered into a cargo container at a loading rack located in Texas; and (3) assignment of collecting, reporting and remitting duties to odorizers and importers rather than to loading rack operators.

S.B. 925's express application of delivery fees to imported LPG will require some companies that receive LPG from a source of supply located outside Texas to report and remit fees to the commission. Nevertheless, the commission does not anticipate burdensome changes in the current fee administration system to result either from S.B. 925's imposition of the fee at the time of odorization or import (rather than upon delivery of odorized LPG into a cargo container at a loading rack located in Texas) or from S.B. 925's assignment of collecting, reporting and remitting duties to odorizers and importers (rather than to loading rack operators), because, in the majority of cases under the current rules, deliveries of LPG that are subject to the delivery fee appear to occur at the time of odorization, and, in the majority of cases under the current rules, the loading rack operator appears to be the person who odorizes the LPG. Furthermore, the fees themselves are not changing. The commission believes that the rules as proposed specify the least onerous way to ensure equitable administration of delivery fees and comply fully with S.B. 925.

Proposed new §15.41 also defines "continuous movement," to clarify eligibility for the statutory exemption of exported LPG from delivery fees. The proposed rules do not include significant changes in the existing system for documenting export exemption claims.

To illustrate the intended application and outcome of the proposed rules, the commission offers the following seven hypothetical situations involving the odorization of LPG or the import of odorized LPG. These examples are not exhaustive, however, and the commission will apply the statute and the rules to achieve the intended statutory purpose of assessing the fee on LPG that is not otherwise exempt and is either odorized in Texas or imported in odorized form into Texas.

Treatment of Imports. Wholesale quantities of odorized LPG are imported into Texas under different business circumstances and contractual conditions. In each case, the fee is assessed on the total volume of LPG imported in the transport vehicle, regardless whether the entire load is delivered in Texas. The following examples are intended to illustrate how the proposed method of administering LPG delivery fees would apply to five import situations.

Example 1. Import by Texas marketer. In this example, odorized LPG is sold and delivered at an out-of-state loading facility into a transport vehicle owned by a Texas LPG marketer. The LPG is hauled back into Texas and delivered into a bulk storage facility.

Under the amendments as proposed, the marketer would be considered the importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer would be responsible for registering as an importer on AFRED Form 6. The marketer would also be responsible for reporting each month on AFRED Form 1 and remitting to the commission the appropriate delivery fee on the total number of loads imported. These reports and remittances are due on the 25th day of the following month, *e.g.*, October 25 for loads imported during September. The statute assesses a mandatory late penalty of 5 percent on remittances that are 30 days late or less and a mandatory late penalty of 10 percent on remittances that are more than 30 days late.

Example 2. Import by licensee based outside Texas. In this example, odorized LPG is loaded into a bobtail or other transport vehicle at an out-of-state bulk storage plant or other loading facility and delivered to customers in Texas by a marketer whose principal place of business and outlets are all outside Texas.

Under the amendments as proposed, the marketer would be considered an importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by

statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer would be responsible for registering as an importer on AFRED Form 6. The marketer would also be responsible for reporting each month on AFRED Form 1 and remitting to the commission the appropriate delivery fee on all volumes of odorized LPG imported.

Example 3. Import by supplier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into the supplier's own transport vehicle, hauls the LPG into Texas, and delivers it to a bulk storage facility located in this state.

Under the amendments as proposed, the supplier would be considered the importer by virtue of owning the LPG at the time of import. The supplier would be responsible for registering as an importer on AFRED Form 6 and for reporting and remitting monthly as described in example 1 above.

Example 4. Import by common carrier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into a transport vehicle owned by a common carrier, who hauls the LPG into Texas and delivers it to an LPG marketer.

Under the amendments as proposed, the owner of the LPG at the time of import would be responsible for registering as an importer, and for reporting and remitting the fee to the commission. The owner would not normally be the common carrier, who does not take title to the LPG. If the marketer held title to the LPG at the time of import, the fee would be administered as in Example 1 above. If the supplier held title to the LPG at the time of import, the fee would be administered as in Example 3 above.

Example 5. Import by marketer's transportation subsidiary. In this example, odorized LPG is delivered at an out-of-state loading facility into a transport vehicle owned by a subsidiary of an LPG marketer, hauled into Texas, and delivered into a bulk storage tank located in this state.

Under the amendments as proposed, the marketer or the marketer's transportation subsidiary would be considered the importer, depending on which entity owned the LPG at the time of import. The marketer or the transportation subsidiary would be responsible for registering as an importer on AFRED Form 6 and for reporting and remitting monthly as shown in Example 1 above.

LPG Odorized in Texas. LPG that is odorized in Texas is also bought, sold, transferred, stored, and distributed under many different business arrangements and conditions. In each case, the fee is assessed on the total net volume of LPG odorized in Texas, regardless whether the entire load is delivered in Texas. The examples that follow are intended to illustrate how the proposed method of administering LPG delivery fees would apply in three typical situations.

Example 6. Odorizer owns the LPG. In this example, an LPG supplier that holds title to unodorized LPG adds odorant to each load of LPG delivered at the supplier's refinery, natural gas processing plant, underground storage cavern, or other LPG loading facility.

Under the amendments as proposed, this supplier's operations related to delivery-fee administration would continue virtually unchanged, since the duties and responsibilities of odorizers are the same as the duties and responsibilities of loading rack operators prior to the effective date of S.B. 925. The supplier would continue to be responsible for registering with the commission, as an odorizer, and would continue to collect, report, and remit fees by virtue of being the person who odorized the LPG (Texas Natural Resources Code, §113.244(b)).

Example 7. Storage or terminal operator odorizes supplier's LPG. In this example, unodorized LPG owned by one or more LPG suppliers is stored underground in a cavern or shipped through a pipeline to a terminal owned by an unaffiliated operator. The storage or terminal operator odorizes the LPG load by load upon delivery into transport vehicles that may be owned by suppliers, common carriers, marketers, or other persons. Under previous law that assigned collecting, reporting and remitting duties to loading rack operators, LPG handled in this manner was normally invoiced, and delivery fees were collected and remitted, by the supplier who owned the LPG, not by the storage or terminal operator who added the odorant. Suppliers were assigned collecting and remitting responsibilities by the "first invoicer" provision of the commission's rule, which defined "loading rack operator" as the person or entity invoicing the first sale of odorized LPG dispensed into a cargo container at a loading rack, if the person or entity controlling the day- to-day operations of the loading rack was not the person or entity invoicing the first sale of the LPG.

S.B. 925 expressly requires the person who odorizes the LPG to collect the fee and remit it to the commission. To avoid unnecessary disruption and minimize administrative cost to the industry, the commission's proposed rules permit a supplier to continue to collect and remit fees as agent for an odorizer at a storage or terminal facility if (1) the odorizer never held title to the LPG; and (2) the odorizer and supplier execute and file with the commission AFRED Form 6A, to make the supplier legally responsible for performing the odorizer's duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241-113.250, inclusive. If no AFRED Form 6A is on file with the commission, any person who odorizes LPG is responsible for registering as an odorizer and for collecting and remitting fees to the commission on all nonexempt loads the person odorizes.

This choice is intended to minimize disruption and administrative costs by allowing suppliers and storage or terminal operators to continue existing delivery-fee arrangements where these are cost-effective and appropriate, while fully implementing all requirements of S.B. 925.

Example 8. Storage operator odorizes marketer's LPG; delivery in the absence of a sale. In this example, a marketer either contracts with a supplier for later delivery from the supplier's storage or purchases unodorized LPG and places it in a storage facility owned by a supplier or other operator. At a later date, the LPG is retrieved from storage, odorized by the storage facility operator, and either transported to the marketer or picked up by the marketer in the absence of a sale at the time of odorization.

S.B. 925 expressly requires the owner of LPG at the time of odorization to pay the fee and requires the person who odorizes the LPG to collect the fee and remit it to the commission. Under the commission's amendments as proposed, the marketer would be responsible for paying the fee to the person who odorized the marketer's LPG on each load odorized and delivered upon retrieval from storage, by virtue of the marketer's being the owner of LPG at the time of odorization, whether or not a sale took place simultaneously. The commission views S.B. 925 as applying to deliveries of all nonexempt loads of LPG that are sold and placed into commerce in Texas, without

limitation as to the timing of the sale. In this example, the fee would be collected, reported, and remitted to the commission by the storage operator, by virtue of the storage operator's being the person who odorized the LPG. Further, in this example, the storage operator could not designate the marketer as an odorizer agent on AFRED Form 6A because the marketer would not own the gas throughout the transaction and no supplier would be involved.

Dan Kelly, director, Alternative Fuels Research and Education Division (AFRED), has determined that for each year of the first five years the sections as proposed will be in effect there will be fiscal implications for state government. Application of delivery fees to imported LPG will increase revenue to the state's dedicated Alternative Fuels Research and Education Fund Account by an estimated $50,000 to $130,000 a year. The exact amount cannot be determined because the commission lacks complete and accurate information concerning the amount of odorized LPG imported into Texas from sources outside the state. Mr. Kelly has determined that for each year of the first five years the sections as proposed will be in effect there will be no fiscal implications for local governments.

Mr. Kelly also has determined that for each year of the first five years the sections as proposed will be in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a more equitable and efficient system of collecting the fees that support the commission's research, education, and marketing programs related to the use of LPG as an environmentally beneficial alternative fuel.

There is anticipated economic cost to small businesses and individuals required to comply with the proposed repeals and new sections. Marketers that import odorized LPG directly from out of state into Texas will be required to register as importers and remit fees to the commission on imported loads. In addition, any LPG marketers that purchase unodorized LPG and odorize the LPG themselves will be required to register as odorizers and remit fees to the commission on loads they odorize. The cost of complying with the proposed amendments cannot be determined, since the costs will be incurred only by companies that import odorized LPG or that odorize LPG and will vary from company to company, depending on the amount of LPG odorized or imported, the availability of reciprocal collection and reporting agreements with other states that may reduce importers' administrative costs, and other factors.

Comments on the proposal may be submitted to Dan Kelly, Director, AFRED, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. For more information, contact Mr. Kelly at (512) 463-7110.

Subchapter A. General Rules

[General Rules of Practice and Procedure]

16 TAC §§15.1, 15.2, 15.21–15.27

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The commission proposes the repeals under the Texas Natural Resources Code, §113.246, which requires the commission to adopt rules necessary for the administration, collection, reporting and payment of the fees payable or collected under Texas Natural Resources Code §§113.241-113.250, inclusive.

Texas Natural Resources Code, §§113.241-113.250, are affected by the proposed repeals.

§15.1. Definitions.
§15.2. Loading Rack Registration.
§15.21. Fee on Delivery of Odorized Liquefied Petroleum Gas (LPG).
§15.22. Report and Remittance of Fees.
§15.23. Exemptions.
§15.24. Loading Rack Refunds.
§15.25. Commission Refund.
§15.26. Penalty for Failure To Report as Required.
§15.27. Civil Penalties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714666
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463-7008

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16 TAC §§15.1, 15.3, 15.5, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.75, 15.80, 15.85, 15.90, 15.95, 15.100

The commission proposes the new sections under Texas Natural Resources Code, §113.246, which requires the commission to adopt rules necessary for the administration, collection, reporting and payment of the fees payable or collected under Texas Natural Resources Code §§113.241-113.250, inclusive.

Texas Natural Resources Code, §§113.241-113.250 are affected by the proposed new rules.

§15.1. Purpose.

The commission through the employees of the Alternative Fuels Research and Education Division and other divisions as from time to time may be appropriate or necessary administers the Alternative Fuels Research and Education program pursuant to Texas Natural Resources Code, §§113.241, *et seq.*, and the rules adopted pursuant thereto, 16 Tex. Admin. Code §§15.1, *et seq.* These rules are promulgated to establish clearly:

(1) when the obligation to pay a delivery fee is imposed, by defining "means of conveyance," "delivery," "sold and placed into commerce," and other terms used in Texas Natural Resources Code, §§113.241, *et seq.*, but not defined by statute;

(2) which persons are responsible for paying the fee, by defining "owner of LPG at the time of import," "owner of LPG at the time of odorization," "time of import," "time of odorization" and other terms used in Texas Natural Resources Code, §§113.241, *et seq.*, but not defined by statute;

(3) which persons are responsible for reporting, collecting and remitting fees to the commission by defining "importer," "odorizer," "marketer," "supplier" and other terms used in Texas Natural Resources Code, §§113.241, *et seq.*, but not defined by statute; and

(4) the amount of fees due, based on net volume of odorized LPG delivered into any means of conveyance to be sold and placed into commerce.

§15.3. General Provisions.

(a) Unless otherwise specifically stated, all days are calendar days.

(b) In computing any period of time prescribed in §§15.1 - 15.100 of this title (relating to general rules), the last day of the period being computed shall be included, unless it is a Saturday, Sunday, or an official state holiday, in which event the period shall continue to run until 5:00 p.m. on the next day that is not a Saturday, Sunday, or an official state holiday.

§15.5. AFRED Forms.

(a) Under the provisions of the Texas Natural Resources Code, §§113.241-113.250, inclusive, the Railroad Commission of Texas adopts the following forms for use by the Alternative Fuels Research and Education Division.

(1) AFRED Form 1. Odorizer's or Importer's Report of Fees Collected.

(2) AFRED Form 1A. Schedule A: Schedule of Refund Amounts.

(3) AFRED Form 2. Load Exemption: Certificate of LPG Destined for Export.

(4) AFRED Form 3. Fee on Delivery of Odorized LPG: Refund Request to Commission.

(5) AFRED Form 4. Blanket Exemption.

(6) AFRED Form 5. Refund Request to Odorizer or Importer.

(7) AFRED Form 6. Odorizer or Importer Registration.

(8) AFRED Form 6A. Odorizer Designation of Agent.

(b) The commission delegates to the director the authority to amend the AFRED forms listed in subsection (a) of this section as necessary to enable the commission to fulfill its duties under Texas Natural Resources Code, §§113.241-113.250, inclusive.

§15.41. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AFRED–The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.

(2) Cargo tank–Any receptacle mounted on a transport vehicle, including but not limited to a rail car, bobtail or semitrailer, designed and used for the transportation or storage of liquefied petroleum gas.

(3) Commission–The Railroad Commission of Texas.

(4) Continuous movement–Movement of odorized LPG in the same transport vehicle from the time of odorization or import to a destination outside Texas. The term does not apply to odorized LPG that is offloaded in Texas from the transport vehicle into a storage facility, to LPG that is commingled in Texas with other LPG, or to partial loads.

(5) Delivery–The first introduction of odorized LPG into a means of conveyance or the first import of odorized LPG into Texas, regardless whether a sale occurs simultaneously.

(6) Director–The executive head of AFRED appointed by the commission to administer the AFRED program pursuant to Texas Natural Resources Code, §§113.241, *et seq.*, and the rules adopted pursuant thereto, 16 Tex. Admin. Code §§15.1, *et seq.*, or the director's delegate.

(7) Division–The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas.

(8) Importer–A person who causes odorized LPG to be moved into Texas from a location outside Texas.

(9) Liquefied petroleum gas or LPG–Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, or butylenes.

(10) Marketer or LPG marketer–A person engaged in the business of buying and selling odorized LPG to wholesale or retail customers.

(11) Means of conveyance–Any transport vehicle, including but not limited to a rail car, bobtail or semitrailer, designed and used for the transportation of LPG.

(12) Odorizer–A person who adds odorant to LPG within Texas, including but not limited to an LPG supplier, terminal operator, loading rack operator, or a person subject to filing odorization reports with the commission and complying with the commission's odorization rule, §9.152 of this title (relating to report of odorization), or a supplier who has been designated as the agent of such person on AFRED Form 6A.

(13) Owner of LPG at the time of import–The person holding legal title to odorized LPG at the time of its import into Texas, including but not limited to an LPG marketer or supplier.

(14) Owner of LPG at the time of odorization–The person holding legal title to odorized LPG immediately after odorant has been added to the LPG, including but not limited to an LPG marketer.

(15) Person–An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, including but not limited to an LPG supplier or LPG marketer.

(16) Sold and placed into commerce–Sold or otherwise transferred to a reseller or end user for eventual resale or consumption, including but not limited to a sale or other transfer to a marketer; to an industrial, commercial, agricultural or other business; to a federal or state agency; to a political subdivision; or to a nonprofit organization.

(17) Supplier–A person engaged in the business of selling or otherwise transferring bulk quantities of LPG to an LPG marketer or other customer to be sold and placed into commerce.

(18) Time of import–The time of first entry of odorized LPG into Texas from another state or from outside the United States.

(19) Time of odorization–The time of the first delivery of odorized LPG into a means of conveyance located in Texas.

§15.45. Registration of Odorizers, Odorizer Agents, and Importers.

(a) All odorizers and importers are subject to this section on the date that the odorizer first odorizes LPG within Texas or the importer first imports odorized LPG into Texas. Odorizer agents are subject to this section on the date the odorizer and the odorizer's agent sign AFRED Form 6A.

(b) Each person subject to this section shall register with the commission by filing AFRED Form 6 or AFRED Form 6A as follows:

(1) no later than the 30th day after the date the person becomes subject to this section; and

(2) on or before May 1 of each succeeding year.

(c) Odorizers may delegate the duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive, and §§15.50 and 15.55 of this title (relating to fee on delivery of odorized LPG and report and remittance of fees), to one or more suppliers if:

(1) the odorizer never holds title to the supplier's LPG; and

(2) the odorizer and supplier execute and file with the commission AFRED Form 6A, which makes the supplier legally responsible for performing the odorizer's duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive, and §§15.50 and 15.55 of this title (relating to fee on delivery of odorized LPG and report and remittance of fees) at a specific facility where LPG is odorized. The odorizer and supplier shall execute and file with the commission a separate AFRED Form 6A for each facility at which the supplier acts as agent for the odorizer. The execution of an AFRED Form 6A makes the supplier subject to all obligations of an odorizer under 16 Tex. Admin. Code, §§15.1 - 15.100, inclusive, which include, among other things, retaining documents and permitting audit by the commission.

(3) Odorizers filing AFRED Form 6A shall also file AFRED Form 6.

(d) Each person subject to this section shall file a new AFRED Form 6 or AFRED Form 6A within 30 days after any change in any of the information reported on either form.

(e) Failure to file AFRED Form 6 and AFRED Form 6A as required by this section may subject the person to civil penalties under §15.80 of this title (relating to civil penalties).

(f) Filing AFRED Form 6 or AFRED Form 6A does not satisfy an odorizer's obligation to file LPG Form 17 under §9.152 of this title (relating to report of odorization).

§15.50. Fee on Delivery of Odorized LPG.

(a) The odorizer or importer shall be responsible for collecting the fee and remitting the fee to the commission.

(b) The amount of the fee shall be computed on the net amount of odorized LPG delivered into any means of conveyance to be sold and placed into commerce in accordance with the following fee schedule:

(1) $7.50 for each delivery of less than 1,500 gallons;

(2) $9.00 for each delivery of 1,500 gallons or more but less than 1,800 gallons;

(3) $10 for each delivery of 1,800 gallons or more but less than 2,000 gallons;

(4) $12.50 for each delivery of 2,000 gallons or more but less than 2,500 gallons;

(5) $13.50 for each delivery of 2,500 gallons or more but less than 2,700 gallons;

(6) $25 for each delivery of 2,700 gallons or more but less than 5,000 gallons;

(7) $37.50 for each delivery of 5,000 gallons or more but less than 8,000 gallons;

(8) $50 for each delivery of 8,000 gallons or more but less than 12,000 gallons;

(9) for each delivery of 12,000 gallons or more, $25 for each increment of 5,000 gallons, and $25 for any remainder of less than 5,000 gallons.

§15.55. Report and Remittance of Fees.

(a) On or before the 25th day of each month, or the first business day after the 25th day of each month in which the 25th falls on a Saturday, Sunday, or a legal holiday, each odorizer and importer shall file a report and remit to the commission all fees due on odorized LPG delivered into a means of conveyance in the previous month. Fees are due to the commission on all LPG delivered into a means of conveyance in the previous month, regardless of whether the fees were actually collected from persons responsible for paying the fees in that month. The report shall be prepared on AFRED Form 1, Odorizer's or Importer's Report of Fees Collected, shall be filed by mailing the completed form and fees to AFRED, and shall be postmarked on or before the deadline for filing. Late filings or failure to file as required will subject the odorizer or importer to additional fees or penalties under §15.75 and §15.80 of this title (relating to penalty for failure to report as required and civil penalties).

(b) Odorizers and importers may file amended reports for the months of September 1997 through January 1998 without penalty, provided such reports are postmarked on or before March 25, 1998.

§15.60. Exemptions.

(a) No fee shall be collected on any deliveries of odorized LPG destined for export out of Texas if the LPG is in continuous movement to a destination outside the state, unless such a fee is required to be levied and collected under the federal Propane Education and Research Act of 1996 (15 U.S.C. §6401, *et seq.*).

(b) Persons or their representatives claiming an exemption under this section must complete the appropriate form as specified in subsections (c) or (d) of this section and return it to the person making the exempt delivery.

(c) AFRED Form 2, Load Exemption Certificate of LPG Destined for Export, or another form specifically approved in advance in writing as equivalent by the division, shall be completed by any person certifying that a particular load of LPG is exempt from the fee.

(d) AFRED Form 4, Blanket Exemption, or another form specifically approved in advance in writing as equivalent by the division, shall be completed by any person obtaining an exemption for all LPG purchased and filed annually with the odorizer or importer and a copy filed with AFRED. Each odorizer or importer shall keep all exemption forms on file for a minimum of four years and readily available in a convenient and organized manner for commission inspection.

§15.65. Odorizer or Importer Refunds.

Any person who pays a fee to an odorizer or importer on a load of LPG that is exempt under §15.60 of this title (relating to exemptions) may apply to the odorizer or importer for a refund of the amount paid. To apply for the refund, the person shall complete AFRED Form 5, Refund Request to Odorizer or Importer, and return it to the odorizer or importer that collected the fee. Any odorizer or importer that refunds a fee based on receipt of AFRED Form 5 shall report the amount of the refund on Schedule A of AFRED Form 1. All amounts refunded and reported in this manner may be deducted from the total

amount of fees collected to arrive at the total amount of fees to be remitted to the commission. An odorizer or importer shall maintain on file for a minimum of four years the refund request forms for all refunds reported to the commission, and shall make these forms readily available for commission inspection.

§15.70. Commission Refund.

An odorizer or importer may petition the commission for refund of fees remitted to the commission in error. An odorizer or importer seeking a refund shall complete AFRED Form 3, Fee on Delivery of Odorized LPG: Refund Request to Commission; shall include a statement of the reason for the refund and all supporting export and fee-payment documents; and shall file the request with the commission by mailing the completed form and all supporting documents to AFRED. Supporting export documents include, but are not limited to, bills of lading, shipping manifests and load tickets. Supporting fee-payment documents include, but are not limited to, invoices, ledgers and journal entries tied to export documents.

§15.75. Penalty for Failure To Report as Required.

(a) Odorizers and importers filing a report or remitting fees later than the 25th day of the month in which fees are due, or later than the first business day after the 25th day of a month in which the 25th falls on a Saturday, Sunday, or a legal holiday, but within 30 days of the deadline, shall remit a penalty in the amount of 5.0% of the amount of fees originally due and payable.

(b) Odorizers and importers filing a report or remitting fees more than 30 days after the deadline shall remit a penalty in the amount of 10% of the amount of fees originally due and payable.

(c) The director may impose an additional penalty of 75% of the amount of the fees and penalties due and payable if the director determines that the failure to file a report or to remit the fees collected is the result of fraud or an intent to evade the provisions of the Texas Natural Resources Code, §§113.241-113.245, or commission rules.

§15.80. Civil Penalties.

(a) Any person who violates the provisions of the Texas Natural Resources Code, §§113.241-113.245, or the rules of the commission implementing those provisions forfeits to the state a civil penalty in an amount not less than $25 and not more than $200.

(b) At the request of the commission, the attorney general is empowered to sue in a court of competent jurisdiction to collect any fee or penalty due under the provisions of the Texas Natural Resources Code, §§113.241-113.250, inclusive.

§15.85. Records.

Odorizers and importers shall maintain sufficient papers, books, accounts, documents, and other business records regarding their operations, including copies of all forms filed at the commission and their supporting documentation, if any, to enable the commission to determine whether the odorizers and importers have remitted all fees due under §15.50 of this title (relating to fee on delivery of odorized LPG). Odorizers and importers shall make available all such papers, books, accounts, documents, and other business records to the commission for inspection under §15.90 of this title (relating to power of entry; audits and investigations), and shall maintain all such records for a minimum of four years.

§15.90. Power of Entry; Audits and Investigations.

(a) A member or employee of the commission, the director, or another person authorized or designated by any such person, at reasonable times and for reasonable purposes, may enter an office, premises, or place of business of an odorizer or importer to test equipment and to inspect, examine, and obtain copies of the papers, books, accounts, documents, business records, and other materials maintained under §15.85 of this title (relating to records) for the purpose of conducting an audit or investigation or enforcing or administering the AFRED program or commission rules.

(b) Odorizers and importers and their officers, employees, or agents may not refuse or deny entry under this section to a member or employee of the commission, the director, or another person authorized or designated by any such person and may not hinder a person who is conducting an audit or investigation or attempting to enforce or administer the AFRED program or commission rules. The odorizer or importer is entitled to be represented when a member or employee of the commission, the director, or another person authorized or designated by any such person enters to make inspections, examinations, and tests on the premises of the odorizer or importer. A member or employee of the commission, the director, or another person authorized or designated by any such person shall allow reasonable time of not more than 24 hours for the odorizer or importer to secure a representative before entering.

§15.95. Procedure for Compliance With or Challenge to Audit Results.

(a) Upon completion of an audit or investigation, the auditor or investigator shall deliver a written copy of the findings to the director and shall mail by certified mail a copy to the odorizer or importer that is the subject of the audit or investigation. The odorizer or importer may file a written response, and shall have 20 days from the date the findings are postmarked to file the response with the director.

(b) Upon receipt of the audit or investigation findings and any written response, the director may gather any additional information necessary or appropriate to making a full and complete analysis of the findings and response.

(c) If the director determines that an odorizer or importer has not remitted the fee required by §15.50 of this title (relating to fee on delivery of odorized LPG) for the audit period, the director may prepare a report that states the facts on which the determination is based and the director's recommendation as to the amount of the fees or additional fees to be remitted by the odorizer or importer, or the penalty, if any, to be paid by the odorizer or importer or the amount of the refund of fees due to the odorizer or importer.

(d) The director shall give the odorizer or importer written notice of the report by mailing it to the odorizer or importer by certified mail. The notice shall include a statement that the odorizer or importer has a right to a hearing on the director's determination contained in the report.

(e) Within 20 days after the date the notice is postmarked, the odorizer or importer shall file a written response either accepting the director's determination, and recommended penalty, if any, or requesting a hearing on the director's determination.

(f) If the odorizer or importer accepts the director's determination that fees and/or a penalty are due, the odorizer or importer shall remit payment of the full amount to the director within 30 days of the postmark of the odorizer's or importer's acceptance under subsection (c) of this section. The director may permit payment of the fees and/or penalty over a reasonable period not to exceed six months, provided that the odorizer or importer agrees in writing to the terms of the payment.

(g) If an odorizer or importer requests a hearing or fails to respond timely to the notice given under subsection (b) of this section, the director shall refer the matter to the Office of General Counsel for the setting of a hearing. The Office of General Counsel shall assign

an examiner to conduct a hearing, which shall be conducted under the Commission's General Rules of Practice and Procedure, 16 Tex. Admin. Code, Chapter 1.

(h) Following hearing, the commission may find that the odorizer or importer has violated commission rules; may determine the amount of the fee due or to be refunded; may impose a penalty, may find that no violation has occurred; and may make any other finding based on the evidence in the record.

(i) If the odorizer or importer does not remit the fee and pay the penalty, if any, determined or imposed by the commission, and if the enforcement of the commission's order is not stayed, then the Office of General Counsel may refer the matter to the attorney general for collection of the fee and the penalty, if any, determined or imposed by the commission.

§15.100. Interpretation and Application.

(a) The fact situations in subsections (b) and (c) of this section illustrate the commission's interpretation and application of Texas Natural Resources Code, §§113.241, *et seq.* , and the rules adopted pursuant thereto, 16 Tex. Admin. Code §§15.1, *et seq.*, and demonstrate how the commission will determine which entities are responsible for paying and for collecting and remitting the fee.

(b) Treatment of imports. Wholesale quantities of odorized LPG are imported into Texas under different business circumstances and contractual conditions. In each case, the fee is assessed on the total volume of LPG imported in the transport vehicle, regardless whether the entire load is delivered in Texas. The following examples illustrate how the commission's rules for administering LPG delivery fees apply to five import situations.

(1) Import by marketer. In this example, odorized LPG is sold and delivered at an out-of-state loading facility into a transport vehicle owned by a Texas LPG marketer. The LPG is hauled back into Texas and delivered into a bulk storage facility. Under the commission's rules, the marketer is considered the importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer is responsible for registering as an importer on AFRED Form 6. The marketer is also responsible for reporting each month on AFRED Form 1 and remitting to the commission the appropriate delivery fee on the total number of loads imported. These reports and remittances are due on the 25th day of the following month, *e.g.*, October 25 for loads imported during September. The statute assesses a mandatory late penalty of 5 percent on remittances that are 30 days late or less and a mandatory late penalty of 10 percent on remittances that are more than 30 days late.

(2) Import by licensee based outside Texas. In this example, odorized LPG is loaded into a bobtail or other transport vehicle at an out-of-state bulk storage plant or other loading facility and delivered to customers in Texas by a marketer whose principal place of business and outlets are all outside Texas. Under the commission's rules, the marketer is considered an importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer is responsible for registering as an importer on AFRED Form 6. The marketer is also responsible for reporting each month on AFRED Form 1 and remitting to the commission the appropriate delivery fee on all volumes of odorized LPG imported.

(3) Import by supplier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into the supplier's own transport vehicle, hauls the LPG into Texas, and delivers it to a bulk storage facility located in this state. Under the commission's rules, the supplier is considered the importer by virtue of owning the LPG at the time of import. The supplier is responsible for registering as an importer on AFRED Form 6 and for reporting and remitting monthly as described in paragraph 1 of this subsection.

(4) Import by common carrier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into a transport vehicle owned by a common carrier, who hauls the LPG into Texas and delivers it to an LPG marketer. Under the commission's rules, the owner of the LPG at the time of import is responsible for registering as an importer and for reporting and remitting the fee to the commission. The owner would not normally be the common carrier, who does not take title to the LPG. If the marketer holds title to the LPG at the time of import, the fee is administered as in the example in paragraph (1) of this subsection. If the supplier holds title to the LPG at the time of import, the fee is administered as in the example in paragraph (3) of this subsection.

(5) Import by marketer's transportation subsidiary. In this example, odorized LPG is delivered at an out-of-state loading facility into a transport vehicle owned by a subsidiary of an LPG marketer, hauled into Texas, and delivered into a bulk storage tank located in this state. Under the commission's rules, the marketer or the marketer's transportation subsidiary is considered the importer, depending on which entity owned the LPG at the time of import. The marketer or the transportation subsidiary is responsible for registering as an importer on AFRED Form 6 and for reporting and remitting monthly as shown in the example in paragraph (1) of this subsection.

(c) LPG Odorized in Texas. LPG that is odorized in Texas is also bought, sold, transferred, stored, and distributed under many different business arrangements and conditions. In each case, the fee is assessed on the total net volume of LPG odorized in Texas, regardless whether the entire load is delivered in Texas. The examples that follow illustrate how the commission's rules for administering LPG delivery fees apply in three typical situations.

(1) Odorizer owns the LPG. In this example, an LPG supplier that holds title to unodorized LPG adds odorant to each load of LPG delivered at the supplier's refinery, natural gas processing plant, underground storage cavern, or other LPG loading facility. Under the commission's rules, this supplier's operations related to delivery-fee administration would continue virtually unchanged, since the duties and responsibilities of odorizers are the same as the duties and responsibilities of loading rack operators prior to the effective date of Senate Bill 925, 75th Legislature, Regular Session. The supplier continues to be responsible for registering with the commission as an odorizer, and continues to collect, report, and remit fees by virtue of being the person who odorizes the LPG, under Texas Natural Resources Code, §113.244(b).

(2) Storage or terminal operator odorizes supplier's LPG. In this example, unodorized LPG owned by one or more LPG suppliers is stored underground in a cavern or shipped through a pipeline to a terminal owned by an unaffiliated operator. The storage or terminal operator odorizes the LPG load by load upon delivery into transport vehicles that may be owned by suppliers, common carriers, marketers, or other persons. Under previous law that assigned collecting, reporting and remitting duties to loading rack operators, LPG handled in this manner was normally invoiced, and delivery fees were collected and remitted, by the supplier who owned the LPG, not by the storage or terminal operator who added the odorant. Suppliers were assigned collecting and remitting responsibilities by the "first invoicer" provision of the commission's rule, which defined

"loading rack operator" as the person or entity invoicing the first sale of odorized LPG dispensed into a cargo container at a loading rack, if the person or entity controlling the day-to-day operations of the loading rack was not the person or entity invoicing the first sale of the LPG. As amended by S.B. 925, 75th Legislature, Texas Natural Resources Code §113.244(b) expressly requires the person who odorizes the LPG to collect the fee and remit it to the commission. To avoid unnecessary disruption and minimize administrative cost to the industry, the commission's rules permit a supplier to continue to collect and remit fees as agent for an odorizer at a storage or terminal facility if the odorizer never held title to the LPG and the odorizer and supplier execute and file with the commission AFRED Form 6A, to make the supplier legally responsible for performing the odorizer's duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive. If no AFRED Form 6A is on file with the commission, any person who odorizes LPG is responsible for registering as an odorizer and for collecting and remitting fees to the commission on all nonexempt loads the person odorizes. This choice is intended to minimize disruption and administrative costs by allowing suppliers and storage or terminal operators to continue existing delivery-fee arrangements where these are cost-effective and appropriate, while fully implementing all requirements of Texas Natural Resources Code, §113.244.

(3) Storage operator odorizes marketer's LPG; delivery in the absence of a sale. In this example, a marketer either contracts with a supplier for later delivery from the supplier's storage or purchases unodorized LPG and places it in a storage facility owned by a supplier or other operator. At a later date, the LPG is retrieved from storage, odorized by the storage facility operator, and either transported to the marketer or picked up by the marketer in the absence of a sale at the time of odorization. Texas Natural Resources Code, §113.244(b) expressly requires the owner of LPG at the time of odorization to pay the fee and requires the person who odorizes the LPG to collect the fee and remit it to the commission. Under the commission's rules, the marketer is responsible for paying the fee to the person who odorized the marketer's LPG on each load of the marketer's LPG odorized and delivered upon retrieval from storage, by virtue of the marketer's being the owner of LPG at the time of odorization, whether or not a sale took place simultaneously. The commission views Texas Natural Resources Code, §113.244, as applying to deliveries of all nonexempt loads of LPG that are sold and placed into commerce in Texas, without limitation as to the timing of the sale. In this example, the fee is collected, reported, and remitted to the commission by the storage operator, by virtue of the storage operator's being the person who odorized the LPG. Further, in this example, the storage operator cannot designate the marketer as an odorizer agent on AFRED Form 6A because the marketer owns the gas throughout the transaction and no supplier is involved.

(d) The fact situations in subsections (b) and (c) of this section are illustrative only. In all situations, the commission will apply the provisions of Texas Natural Resources Code, §§113.241, *et seq.*, and the rules adopted pursuant thereto, 16 Tex. Admin. Code §§15.1, *et seq.*, to achieve the intended statutory purpose of assessing the fee on LPG, not otherwise exempt, that is either odorized in Texas or imported in odorized form into Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714665

Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–7008

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Part IV. Texas Department of Licensing and Regulation

Chapter 72. Staff Leasing Services

16 TAC §§72.1, 72.10, 72.20, 72.70, 72.71, 72.80-72.83, 72.90

The Texas Department of Licensing and Regulation proposes amendments to §§72.1, 72.10, 72.20, 72.70- 72.71, 72.80-72.83, and 72.90, regarding staff leasing services.

The changes in §72.1 are the result of codification.

The changes in §72.10 delete redundant definitions found in the Code and clarifies the Code by defining person.

The changes in §72.20 are the result of additions to the Code which clarify requirements regarding issuance of a limited license.

The changes in §72.70 clarify client and employee notification requirements.

The changes in §72.71 set minimum record retention time for the licensee.

The changes in §72.80 simplify the rules and add an application and administration fee for the new limited license.

The changes in §72.81 set up license staggering, add a new biennial license and the applicable fees, and set a license fee for the limited license.

The changes in §72.82 simplify the rule regarding background check fees.

The changes in §72.83 add a fee for placing trademarks, service marks, and parent company name on the license newly allowed by additions to the Code.

The change in §72.90 conforms the rule to the statute and rules for the Texas Commission of Licensing and Regulation.

Justification: §72.1 Changed because of codification.

Justification: §72.10 Definitions either changed because of codification, deleted because they are redundant to the Code or added for clarity.

Justification: §72.20 Sets limited license application requirements.

Justification: §72.70 Deletion found in Code. Addition for clarification.

Justification: §72.71 Needed for regulatory records retention procedures.

Justification: §72.80 Needed for clarity.

Justification: §72.81 Required by Code fee changes and license period changes.

Justification: §72.82 Required by Code change.

Justification: §72.83 Code change requiring or allowing certain information to appear on license certificate.

Justification: §72.90 The rule conforms to Tex. Rev. Civ. Stat. Ann. art. 9100 (Vernon 1991) and Tex. Admin. Code §60 (1994).

Jimmy G. Martin, Manager, Consumer Protection Section, has determined that for the first five-year period these sections are in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the sections. There will be a decrease in revenue of approximately $83,000 annually because background checks may not be required upon renewal of a license, however, this could be offset by an increase in the issuance of limited licenses.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the simplification and clarification of rules thereby enhancing public knowledge of the regulated industry.

The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be the overall lowering of the cost of licensing.

There will be no additional cost to comply.

Comments on the proposal may be submitted to Jimmy G. Martin, Manager, Consumer Protection Section, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under Texas Labor Code Annotated §91 (Vernon 1997) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The Code and Article affected by the amendments is Texas Labor Code Annotated §91 (Vernon 1997) and Texas Revised Civil Statutes Annotated article 9100 (Vernon 1991).

§72.1. Authority.

These rules are promulgated under the authority of the Texas Labor Code Annotated §91 (Vernon 1997) [~~Staff Leasing Services Act, Texas Civil Statutes, Article 9104,~~] and Texas Revised Civil Statutes Annotated article 9100 (Vernon 1991) [~~Texas Civil Statutes, Article 9100~~].

§72.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

The Code [~~Act~~] - the Texas Labor Code Annotated §91 (Vernon 1997) [~~Staff Leasing Services Act, Texas Civil Statutes, Article 9104~~].

[~~Assigned Employee - a full-time employee whose normal work week is at least 25 hours per week and whose work is performed in this state.~~]

[~~Good Moral Character - a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this state and nation.~~]

[~~Limited Basis - when the principal place of business of a staff leasing service is out of and the service employs fewer than 20 assigned employees in this state.~~]

Person - means any individual, partnership, corporation, or any other business entity.

§72.20. Licensing Requirements [- ~~General~~].

(a)-(c) (No change).

(d) To obtain a "limited" license an applicant shall meet the requirements of Tex. Labor Code Annotated §91 (Vernon 1997) [~~must prove that fewer than 20 employees are assigned to work locations in Texas and must meet all other provisions of the Act and these rules.~~]

(e) Falsification of a required document is grounds for denial and/or revocation of license.

(f) License application forms shall be fully executed and sworn to.

§72.70. Responsibility of Licensee [- ~~General~~].

[~~(a) A licensee may not allow any person to act as a controlling person, as defined, unless that person is listed on the licensing application and has submitted a personal information form supplied by the Department.~~]

(a) [~~(b)~~] All licensees shall notify employees and service recipients of the name, mailing address, and telephone number of the department. The notification shall contain a statement that complaints or questions concerning the regulation of staff leasing services may be addressed to the department.

(1) Notification shall be made a part of all contractual agreements between licensees and clients. The notification shall appear in 12 point and bold font so as to be distinguished from all other parts of the contract.

(2) Each employee of a licensee shall receive a 2 inch by 3 1/2 inch [~~2-inch by 3-inch~~] notification card with the required [~~appropriate~~] information not later than the first payday after the date on which the individual becomes an assigned employee.

(b) [~~(c)~~] The licensee shall have each employee sign a notification of staff leasing services [~~service~~] agreement [~~, as required by the Act, Section 6, Staff Leasing Services Agreement,~~] which shall be kept on file for two years after employment is terminated.

(c) License applications and licensee information required on the application shall be updated within 45 days after any material change to any of the information provided on original or renewal applications.

[~~(d) All licensees and all controlling persons of a licensee shall read and be familiar with the Act and associated rules.~~]

§72.71. Responsibility of Licensee - Records.

(a) Upon notification , the licensee shall allow the commissioner or his designee to audit records required by the Code [~~Act~~] and any records required by these rules. [~~the Administrative Rules.~~]

(b) All records pertaining to staff leasing services contracted for, provided or pertaining to a licensed staff leasing service shall be maintained and available for inspection by the commissioner or his designee for five years.

§72.80. Fees - Licensing Application.

(a) All application fees are non-refundable.

(b) The application/administrative fee shall be $300 per application. [~~This fee is Non-Refundable.~~]

(c) The renewal application/administration fee shall be $300 per application.

(d) The limited license application/administration fee shall be $300.

§72.81. Fees - Licensing.

(a) License fees are refundable if the license is not issued.

(b) The one year prorated renewal licensing fee shall be:

(1) $1,500 for 0 to 249 assigned employees;

(2) $2,000 for 250 to 750 assigned employees; and,

(3) $2,500 for more than 750 assigned employees. [~~This fee is refundable only if a license is not issued or renewed.~~]

(c) The two year new and two year renewal licensing fee shall be:

(1) $3000 for 0 to 249 assigned employees;

(2) $4000 for 250 to 750 assigned employees; and,

(3) $5000 for more than 750 assigned employees.

(d) The limited staff leasing services license shall be $1000.

§72.82. Fees - Background Check.

Non-refundable[~~The non-refundable~~] background check fees , when required, shall be $150 each. [~~:~~]

~~[(1) $150 for a business/corporation check;]~~

~~[(2) $150 for each controlling person(s).]~~

§72.83. Fees - Duplicate Licensing/Name Change.

The fee shall be $50 for issuing a duplicate license or for a license name change. If adding more than one trademark an additional $10 per trademark shall be required.

§72.90. Sanctions - Administrative Sanctions/Penalties.

If a person violates Texas Labor Code Annotated §91 (Vernon 1997), or a rule, or order of the commissioner or commission relating to this Code and Chapter, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with this Code or Texas Revised Civil Statutes Annotated article 9100 (Vernon 1991), and Texas Administrative Code §60 (1994) of this title (relating to the Texas Department of Licensing and Regulation). [~~If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with this Act or Texas Civil Statutes, Article 9100, and Chapter 60 of this title (relating to the Texas Department of Licensing and Regulation).~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714765
Tommy V. Smith
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463-7357

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TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 239. Contested Case Procedure Enforcement

22 TAC §239.11

The Board of Vocational Nurse proposes an amendment to §239.11 relative to unprofessional conduct. This rule is amended to included the fact that failure to perform CPR on a patient is grounds for disciplinary action.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Bronk also has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcement of the rule will be public safety.

Comments on the proposed rule may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701, (512) 305-8100.

The amendment of this rule is proposed under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§239.11. Unprofessional Conduct.

Unprofessional or dishonorable conduct, likely to deceive, defraud, or injure the public may include the following described acts or omissions:

(1)-(26) (No change.)

(27) failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including but not limited to:

(A) failing to assess and evaluate a patient's/client's status or failing to institute nursing intervention, including but not limited to basic life support measures, such as CPR, which might be required to stabilize a patient's/client's condition or prevent complications.

(B)-(K) (No change.)

(28)-(29) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 30, 1997.

TRD-9714513
Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 305-8100

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 415. Provider Clinical Responsibilities

Subchapter C. Use and Maintenance of *TXMHMR Drug Formulary*

25 TAC §§415.101-415.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§415.101-415.114, concerning use and maintenance of *TXMHMR Drug Formulary*.

The proposed new sections would describe the policies and procedures governing the use and maintenance of the *TXMHMR Drug Formulary* in department facilities and in community-based settings for mental health and mental retardation services that are funded by TDMHMR. Currently the policies and procedures contained in the proposed new sections are applicable to only department facilities and state-operated community services. Statewide use of the *TXMHMR Drug Formulary* would ensure that individuals receiving inpatient (residential) and community-based services have access to the same drug treatment.

Donald C. Green, chief financial officer, has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact to state and local governments or small businesses. Although it is acknowledged that complying with the subchapter as proposed may have fiscal implications of either increasing or decreasing the cost of care on a consumer-specific basis, the system-wide impact cannot be assessed fully or accurately. The entities to whom the new subchapter would apply are directly or contractually funded to provide the drug treatment that the subchapter is promulgated to ensure. Furthermore, it is anticipated that any potential increases in costs associated with providing continuity of care for individuals transferring between facility and community programs will be offset by increased efficiencies resulting from decreased recidivism or the need for more intense interventions.

Steven Shon, M.D., TDMHMR medical director, has determined that the public benefit anticipated for each year of the first five-year period the sections as proposed are in effect is the opportunity for uninterrupted drug treatment for individuals transferring between facility and community programs as well as the assurance that individuals receiving inpatient (residential) and community-based services have access to the same drug treatment. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no anticipated local employment impact.

Written comments on the proposed new sections may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and with the Texas Health and Safety Code, §534.052, which requires the Texas MHMR Board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority.

The proposal affects the Texas Health and Safety Code, §534.052.

§415.101. Purpose.

The purpose of this subchapter is to provide policies and procedures governing the use and maintenance of the *TXMHMR Drug Formulary*.

§415.102. Application.

(a) This subchapter applies to state hospitals, state schools, state centers, state-operated community services (SOCS), Central Office, local authorities, state-funded community hospitals, and their respective contractors for mental health and mental retardation services funded by the Texas Department of Mental Health and Mental Retardation.

(b) State hospitals, state schools, state centers, state-operated community services (SOCS), Central Office, local authorities, and state- funded community hospitals are responsible for amending the contracts of their contractors that provide TDMHMR-funded mental health and mental retardation services to ensure their compliance with this subchapter.

§415.103. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Adverse drug reaction - Any adverse symptom or sign that is an unexpected reaction to medication and that is noxious, unintended, and occurs at doses normally used in humans for the prophylaxis, diagnosis, or therapy of disease, or for the modification of physiological function.

Contractor - An entity that provides TDMHMR-funded mental health or mental retardation services pursuant to a contract with a service system component or the department.

Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Drug entity - A specific chemical compound and all of its pharmaceutically equivalent salt forms which are used in the treatment or mitigation of disease.

Emergency - A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individuals need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threat, attempts, or other acts the individual overtly or continually makes or commits.

Facility - A state hospital, state school, or state center.

Individual - Any person receiving services from a service system component or contractor.

Local authority - An entity to which the Texas Mental Heath and Mental Retardation Board delegates its authority and responsibility

within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.

Practitioner - A person who acts within the scope of a professional license to prescribe, distribute, administer, or dispense a prescription drug or device, (e.g., a physician, nurse, nurse practitioner, pharmacist, dentist).

Pharmacy and therapeutics committee - A facility committee composed of physicians, pharmacists, registered nurses, and others as appointed by the facility CEO that recommends drug-related policy to the facility's clinical/medical director and CEO.

TXMHMR Drug Formulary or formulary - A continually revised printed listing by nonproprietary name of all drugs approved for use by service system components and their contractors.

Reserve drug - A formulary drug with specific guidelines for use as described in the formulary.

Service system component - A state hospital, state school, state center, state-operated community services (SOCS), local authority, or state-funded community hospital.

State-funded community hospital - An inpatient mental health facility licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 242, or operated by a university health system and exempted from licensure, that provides TDMHMR-funded inpatient mental health services pursuant to a contract between TDMHMR and a local authority.

§415.104. General Requirements.

(a) The Texas Department of Mental Health and Mental Retardation maintains a closed formulary (*TXMHMR Drug Formulary*)that lists drugs approved by the Executive Formulary Committee for use by service system components and their contractors.

(b) A drug is not available for general use by service system components or their contractors unless it is approved by the Executive Formulary Committee. Drugs not listed in the *TXMHMR Drug Formulary* or the *Interim Formulary Update* may not be used except under the limited circumstances described in §415.110 of this title (relating to Prescribing Non-formulary Drugs).

(c) The use of formulary drugs in unusual clinical situations or the use of unusual drug combinations must be accompanied by written justification in the medical record. Additional clinical consultation in these situations should occur as deemed necessary by the prescribing physician.

(d) Reserve drugs, as defined in §415.103 of this title (relating to Definitions), may be prescribed for use outside the guidelines described in the formulary if the prescription is justified in the medical record and reviewed in routine audits of reserve drug use conducted by the service system component.

(e) Department rules governing research, Chapter 405, Subchapter P of this title (relating to Research in Departmental Facilities), applies to all research, including drug research, at facilities and state-operated community services (SOCS). Local authorities conducting research must comply with Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects) as required by Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards), Standard 3.5.P.

§415.105. Organization of TXMHMR Drug Formulary.

Drugs are listed in the *TXMHMR Drug Formulary* by nonproprietary name. The list is based on a modified format of the American Hospital Formulary Service and includes an alphabetical index. Proprietary names may follow in parentheses for information only; the listing of proprietary names is not an endorsement. Other prescribing information is provided as determined necessary by the Executive Formulary Committee. The *American Hospital Formulary Service Drug Information* serves as a standard reference in addition to the approved Food and Drug Administration product labeling. Limitations recommended by the Executive Formulary Committee regarding the use of a drug are noted in the *TXMHMR Drug Formulary*, including specific limitations or guidelines for the use of a reserve drug.

§415.106. Executive Formulary Committee.

(a) Composition.

(1) The chairperson is a physician appointed by the TDMHMR medical director.

(2) The TDMHMR pharmacy discipline head serves as the permanent secretary of the committee and is responsible for preparing the agenda and minutes of committee meetings.

(b) Membership. Members of the Executive Formulary Committee are appointed by the TDMHMR medical director and include:

(1) two state hospital physicians;

(2) two state school physicians;

(3) one state center physician;

(4) one state-operated community services (SOCS) physician;

(5) four local authority practitioners;

(6) two facility pharmacy directors;

(7) one facility clinical pharmacologist;

(8) one facility registered nurse;

(9) the TDMHMR pharmacy discipline head;

(10) the following ex officio members:

(A) the TDMHMR medical director;

(B) the TDMHMR medical specialist for developmental medicine;

(C) the TDMHMR director, Mental Health Facilities;

(D) the TDMHMR director, Mental Retardation Facilities;

(E) the TDMHMR director, Community Services; and

(F) the TDMHMR director, Central Contracting and Procurement Support; and

(11) other persons as appointed by the TDMHMR medical director.

(c) Term of service. Members serve staggered three-year terms and may be reappointed to one additional term. Ex officio members may be reappointed as specified by the TDMHMR medical director.

(d) Meetings. The Executive Formulary Committee meets at least quarterly.

(e) Administrative support. The TDMHMR medical directors office provides administrative support to the Executive Formulary Committee.

§415.107. Responsibilities of the Executive Formulary Committee.

(a) The Executive Formulary Committee maintains and updates the *TXMHMR Drug Formulary* by:

(1) recommending standards of drug use that discourage unnecessary duplication of therapeutic alternatives and encourage the highest standards of medical and pharmacy practice;

(2) periodically reviewing the drugs listed in the formulary to ensure consistency with need, effectiveness, risk, and cost;

(3) consulting with experts in clinical pharmacy, pharmacology, and other medical specialties as necessary to objectively assess drugs under consideration; and

(4) considering the applications submitted in accordance with §415.108 of this title (relating to Applying to Have a Drug Added to the Formulary) or as:

(A) presented by committee members; or

(B) submitted by other qualified persons at the invitation of the Executive Formulary Committee chairperson.

(b) The Executive Formulary Committee makes other recommendations concerning drug use and policy as requested by the TDMHMR medical director.

(c) Approval of a drug entity for inclusion in the *TXMHMR Drug Formulary* does not imply approval of all formulations for that drug. The Executive Formulary Committee designates in the *TXMHMR Drug Formulary* which formulations are allowed for general use by service system components and their contractors.

(d) Approval of a drug formulation constitutes approval of all brands of the product that have been proven to be bioequivalent as listed in the *Approved Drug Products with Therapeutic Equivalence Evaluations*.

(e) If different brands of a drug product are determined to be bioequivalent, the least expensive brand available through the pharmacy contract buying group system is selected by the Executive Formulary Committee for all facility pharmacies.

(f) For a drug entity that has known bioequivalency problems, the Executive Formulary Committee may limit its use to a specific brand based on objective clinical pharmacokinetics data.

§415.108. Applying to Have a Drug Added to the Formulary.

(a) Any member of the Executive Formulary Committee, any service system component practitioner, or any contract practitioner may apply to have a drug added to the *TXMHMR Drug Formulary* by completing the New Drug Application Form DF-1, referenced as Exhibit A in §415.112 of this title (relating to Exhibit) and including:

(1) published articles in biomedical literature that substantiate the efficacy and safety of the proposed drug;

(2) information on the advantages of the proposed drug compared with similar formulary drugs;

(3) a list of formulary drugs that the proposed drug would replace or supplement; and

(4) cost effectiveness data.

(b) Submitting the application.

(1) If the person submitting the application is a facility practitioner or a facility contract practitioner, then that practitioner submits the application to the facilitys pharmacy and therapeutics committee for approval. If the committee approves the application, then it forwards the application to the Executive Formulary Committee.

(2) If the person submitting the application is a non-facility service system component practitioner or a non-facility service system component contract practitioner, then that practitioner submits the application to the components clinical/medical director or designee who determines if the application is appropriate and complete, and if so, forwards the application to the Executive Formulary Committee.

(3) If the person completing the application is a member of the Executive Formulary Committee, then that person submits the application directly to Executive Formulary Committee.

(c) The Executive Formulary Committee considers the drug application and recommends:

(1) approving the proposed drugs inclusion and, if appropriate, approving audit criteria and recommending dosage guidelines;

(2) denying the proposed drugs inclusion;

(3) approving the proposed drug on a trial basis for a specified period of time;

(4) approving the proposed drug as a reserve drug, with guidelines; or

(5) postponing the decision until a later meeting.

§415.109. Changing the TXMHMR Drug Formulary.

(a) Changes to the *TXMHMR Drug Formulary* are based on need, effectiveness, risk, and cost as contained in current and unbiased biomedical literature.

(b) Recommendations by the Executive Formulary Committee for changes to the *TXMHMR Drug Formulary*, as reflected in the meeting's minutes, are submitted to the TDMHMR medical director.

(c) If the TDMHMR medical director or designee approves the recommendations, then the recommendations must be:

(1) identified as approved in writing before implementation; and

(2) listed in the *Interim Formulary Update* and distributed to the CEOs and clinical/medical directors of all service system components.

§415.110. Prescribing Non-formulary Drugs.

(a) Non-formulary drugs may be prescribed:

(1) if no formulary drug exists that is as safe or effective in the specified situation;

(2) if a limited trial of the drug appears to be safer or more effective than any drug listed in the formulary in anticipation of inclusion in the formulary;

(3) if the course of therapy established prior to the individuals admission would be interrupted; or

(4) in an emergency, as defined in §415.103 of this title (relating to Definitions).

(b) Each local authority and state-funded community hospital shall develop and enforce written policies and procedures for

monitoring and approving the prescribing of non-formulary drugs by its practitioners and its contract practitioners.

(c) The department shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non- formulary drugs by facility practitioners and facility contract practitioners.

§415.111. Adverse Drug Reactions.

(a) Each local authority and state-funded community hospital shall develop written policies and procedures for reporting adverse drug reactions to the Food and Drug Administration.

(b) The department shall develop written policies and procedures for facilities when reporting adverse drug reactions to the Food and Drug Administration.

§415.112. Exhibit.

Exhibit A, the New Drug Application Form DF-1, referenced in this subchapter, may be obtained by contacting the Office of Policy Development, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668, (512) 206-4516.

§415.113. References.

The following department rules and statutes are referenced in this subchapter:

(1) Chapter 405, Subchapter P of this title (relating to Research in Department Facilities);

(2) Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards), Standard 3.5.P; and

(3) Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects).

§415.114. Distribution.

(a) This subchapter is distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of Central Office;

(3) CEOs of all service system components (i.e., state hospitals, state schools, state centers, state-operated community services, local authorities, and state-funded community hospitals); and

(4) advocacy organizations.

(b) The CEO of each service system component shall disseminate the information contained in this subchapter to all appropriate staff and contractors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714751
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter D. Indeterminate Premium Reduction Policies

28 TAC §3.309

The Texas Department of Insurance proposes an amendment to §3.309 concerning reserve requirements for indeterminate premium reduction policies. The amendment provides alternatives for determining the reserves required for the life insurance products described in §3.301 of this title (Relating to Indeterminate Premium Reduction Policies). One alternative would provide that an insurer that has issued these products may provide the department an annual actuarial opinion specific to these products in addition to the actuarial opinion required by Insurance Code, Article 3.28, §2A. The other alternative would be to calculate the reserves on these products in accordance with Subchapter NN, Valuation of Life Insurance Policies, which is published elsewhere in this issue of the Texas Register as a proposed new regulation. These methods can be used for those policies issued before December 31, 1998. The reserves for those policies issued on or after that date would be subject to Subchapter NN. Issuers of these products may use the alternative methods in the 1997 annual statement and subsequent financial statements filed with the department.

The department will consider the adoption of the amendment to §3.309 in a public hearing under Docket Number 2315, scheduled for 9:00 a.m. on December 17, 1997 in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe in Austin, Texas

Jose Montemayor, Associate Commissioner for the financial program, has determined that, for the first five-year period the amended section will be in effect, there will be no fiscal implications for state or local government or small business as a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Montemayor also has determined that, for each year of the first five years the amended section will be in effect, the public benefit resulting from administration of the proposed section will be more competitive pricing of some life insurance products. Mr. Montemayor also has determined that for each of the first five years the amended section will be in effect insurers that elect to provide the specific actuarial opinion will incur an additional actuarial expense of $500 to $1,000. The estimated cost of compliance to insurers that elect to calculate the applicable reserves in accordance with Chapter 3, Subchapter NN, Valuation of Life Insurance Policies will vary depending on the types of products offered and depending on the reserves currently held. The type of products most affected by this section are those where the guaranteed maximum premiums after an initial period of years are much higher than the guaranteed low premiums during the initial period of years. In estimating the cost, it is assumed that the guaranteed maximum premiums for the product described in the preceding sentence are approximately ten to fifteen times higher in later years than the initial guaranteed premium. These products are referred to as "Indeterminate Premium Reduction Policies". Insurers with these products that hold reserves only to provide for the expected cost of insurance in the current year may experience an increase in reserves as a result of this regulation.

This increase will vary by such factors as the length of the initial period of years (as referenced above), reserve method, reserve interest rate, the amount of increase of the guaranteed maximum premiums, issue age, length of the benefit period, and the degree of selection in the risks covered. Anticipated ranges of the increase in reserves for these products based on the length of the initial guarantee period are as follows: 1) Immaterial increase where the initial period is less than 5 years; 2) An increase of 2-5 times where the initial period is 10 years; and 3) An increase of approximately 10 times where the initial period is 20 years. These ranges assume that the insurer is currently providing reserves for only the anticipated cost of insurance in the current year. We estimated that the ranges set out above are the highest levels that could occur at some point in the coverage period, and particular results may vary. Increasing reserves to the required levels would then extend a similar level of reserve conservatism to these products as is already required of other life products which should promote greater solvency protection to both the insurer and the public. For insurers who experience the anticipated ranges of reserve increases listed above the range of increases in the price of these products is estimated to be as follows: 1) Immaterial price increase where the initial period is less than 5 years; 2) An approximate 7% price increase where the initial period is 10 years; and 3) An approximate 20% price increase where the initial period is 20 years. Such price increases would only be anticipated if an insurer (subject to the assumptions mentioned above) funds any reserve increase solely out of premiums rather than other sources, and also depend on whether the insurer chooses to continue to offer the particular product as presently designed, or decides to make modifications to its policy forms. Costs to the insurer given any increase in reserves would be the cost of funds required to be in reserves versus available for other uses. The impact of the cost, as with any increase in liabilities, depends on the opportunities for use of funds available to an insurer. The public benefit served by the change is the establishment of reasonable reserve conservatism to promote solvency and the provision for similar reserve conservatism for indeterminate premium products as that required of other products. The result therefore is a leveling of the competitive position of various term life products. The alternative reserving methods in the proposed amendment will result in generally lower reserve requirements than those currently required by the section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. BOX 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Mike Boerner, Managing Actuary for the Financial Program, Mail Code 305-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 3.28 and 1.03A. Article 3.28 authorizes the commissioner to adopt mortality tables and methods consistent with Article 3.28. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department only as authorized by a statute.

The Insurance Code, Article 3.28, is affected by this proposed amendment.

§3.309. Minimum Reserves.

(a) (No change).

(b) Deficiency reserves are required to be calculated using guaranteed premiums. Thus, maximum guaranteed premiums specified in the policy are used in the calculation except that any lower guaranteed premiums must be used for the periods guaranteed. As in other type policies, negative terminal reserves are not permitted; and net premiums for the earlier policy years shall be increased, if necessary, to produce a terminal reserve of zero at the end of such policy years. Any increased net premiums shall be used as the valuation net premiums for purposes of Insurance Code, Article 3.28, §10.

(c) As an alternative to calculating deficiency reserves under subsection (b) of this section, reserves may be calculated pursuant to paragraphs (1) or (2) of this subsection.

(1) Calculate reserves pursuant to Insurance Code, Article 3.28, supported by an actuarial certification of reserve adequacy by an appointed actuary based on an appropriate gross premium valuations; or

(2) Calculate the reserves in compliance with Chapter 3, Subchapter NN of this title (relating to Valuation of Life Insurance Policies).

(d) For policies issued on or after December 31, 1998, and subject to this section, reserves for those policies shall be calculated in accordance with the provisions of Chapter 3, Subchapter NN of this title (relating to Valuation of Life Insurance Policies).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714857
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–6327

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Subchapter NN. Valuation of Life Insurance Policies

28 TAC §§3.14001–3.14008

The Texas Department of Insurance proposes new Subchapter NN concerning the valuation of life insurance policies. Subchapter NN will apply to all life insurance policies, with or without nonforfeiture values, with certain exceptions and conditions. The purpose of the regulation is to adopt tables of select mortality factors; and, rules for their use; rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits, and rules concerning a minimum standard for the valuation of plans with secondary guarantees. The method for calculating basic reserves defined in the proposed subchapter will constitute the commissioners' reserve valuation method for policies to which this subchapter would apply. The effective date is proposed as December 31, 1998, in order to provide affected insurers time to prepare for these new requirements. Section 3.14002 contains six tables of base select mortality factors that were adopted by the NAIC on March 12, 1995, in connection with the adoption by the NAIC of the model regulation for the valuation of life insurance policies.

The department will consider the adoption of new §§3.14001 - 3.14008 in a public hearing under Docket Number 2316, scheduled for 9:00 a.m. on December 17, 1997 in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe in Austin, Texas.

Jose Montemayor, Associate Commissioner for the financial program, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the regulation.

Mr. Montemayor has determined that for each year of the first five years the regulation is in effect, the public benefits anticipated as a result of enforcing the regulation will be improved regulation of insurers' reserving practices which promotes solvency of insurers including consistency in reserving for the products subject to the regulation and use of more current mortality tables. The estimated cost of compliance to insurers will vary depending on the types of products offered and depending on the reserves currently held. The type of products most affected by the regulation are those where the guaranteed maximum premiums after an initial period of years are much higher than the guaranteed low premiums during the initial period of years. In estimating the cost, it is assumed that the guaranteed maximum premiums for the product described in the preceding sentence are approximately ten to fifteen times higher in later years than the initial guaranteed premium. These products are referred to as "Indeterminate Premium Reduction Policies". Insurers with these products that hold reserves only to provide for the expected cost of insurance in the current year may experience an increase in reserves as a result of this regulation. This increase will vary by such factors as the length of the initial period of years (as referenced above), reserve method, reserve interest rate, the amount of increase of the guaranteed maximum premiums, issue age, length of the benefit period, and the degree of selection in the risks covered. Anticipated ranges of the increase in reserves for these products based on the length of the initial guarantee period are as follows: 1) Immaterial increase where the initial period is less than 5 years; 2) An increase of 2-5 times where the initial period is 10 years; and 3) An increase of approximately 10 times where the initial period is 20 years. These ranges assume that the insurer is currently providing reserves for only the anticipated cost of insurance in the current year. We estimated that the ranges set out above are the highest levels that could occur at some point in the coverage period, and particular results may vary. Increasing reserves to the required levels would then extend a similar level of reserve conservatism to these products as is already required of other life products which should promote greater solvency protection to both the insurer and the public. For insurers who experience the anticipated ranges of reserve increases listed above the range of increases in the price of these products is estimated to be as follows: 1) Immaterial price increase where the initial period is less than 5 years; 2) An approximate 7% price increase where the initial period is 10 years; and 3) An approximate 20% price increase where the initial period is 20 years. Such price increases would only be anticipated if an insurer (subject to the assumptions mentioned above) funds any reserve increase solely out of premiums rather than other sources, and also depend on whether the insurer chooses to continue to offer the particular product as presently designed, or decides to make modifications to its policy forms. Costs to the insurer given any increase in reserves would be the cost of funds required to be in reserves versus available for other uses. The impact of the cost, as with any increase in liabilities, depends on the opportunities for use of funds available to an insurer. The public benefit served by the change is the establishment of reasonable reserve conservatism to promote solvency and the provision for similar reserve conservatism for indeterminate premium products as that required of other products. The result therefore is a leveling of the competitive position of various term life products. The numerous other products where such reserve conservatism is currently required are anticipated to generally experience a lower but still reasonable amount of reserve conservatism due to the use of improved mortality tables that this regulation will provide in the calculation of reserves. This reduction of reserves may result in lower prices for these other products. As stated previously, this regulation will result in the same level of acceptable required reserve conservatism to be extended to all products to which this regulation applies which will promote solvency benefits to both the insurer and the public. In addition this regulation will promote reasonable competition across the various product lines which is a benefit to the insurer in having similar reserve standards and is expected to be a benefit to the public in lower prices for many products.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Mike Boerner, Managing Actuary, Mail Code 302-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

The new sections are proposed under the Insurance Code, Articles 3.28 and 1.03A. Article 3.28 authorizes the commissioner of insurance to adopt mortality tables adopted by the National Association of Insurance Commissioners and modifications to those mortality tables and methods consistent with Article 3.28. Article 1.03A provides the commissioner with the authority to adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by a statute.

The Insurance Code, Article 3.28, is affected by these proposed new sections.

§3.14001. Purpose.

(a) The purpose of this subchapter is to provide:

(1) Tables of select mortality factors and rules for their use;

(2) Rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and

(3) Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

(b) The method for calculating basic reserves defined in this subchapter will constitute the Commissioners' Reserve Valuation Method for policies to which this subchapter is applicable.

§3.14002. Adoption of Tables of Base Select Mortality Factors.

The six tables of base select mortality factors in this section are from the model regulation titled "Valuation of Life Insurance Policies Model Regulation" which was adopted by the NAIC on March 12, 1995. The six tables of base select mortality factors include: male aggregate, male nonsmokers, male smoker, female aggregate, female nonsmoker, and female smoker. These tables apply to both age last birthday and age nearest birthday mortality tables. The tables are the

bases to which the respective percentage of §3.14005(a)(2) and (3) and (b)(1)(B) and (C) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) are applied.

FIGURE NO. 1: 28 TAC §3.14002

§3.14003. Applicability.

This subchapter shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after the effective date of this subchapter, subject to the following exceptions in subsection (a) of this section and conditions in subsection (b) of this section.

(1) Exceptions.

(A) This subchapter shall not apply to any individual life insurance policy issued on or after the effective date of this subchapter if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this subchapter, that guarantees the premium rates of the new policy. This subchapter also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(B) This subchapter shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(C) This subchapter shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(D) This subchapter shall not apply to group life insurance certificates unless the certificates provide for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(2) Conditions.

(A) Calculation of the minimum valuation standard for policies with guaranteed nonlevel premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with the provisions of §3.14006 of this title (relating to Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies)).

(B) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period of more than five years, shall be in accordance with the provisions of §3.14007 of this title (relating to Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period of More than Five Years).

§3.14004. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Basic reserves-reserves calculated in accordance with the principles of Insurance Code, Article 3.28, §6.

Contract segmentation method-the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in this section, (or any other valuation mortality table adopted by the NAIC after the effective date of this subchapter and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 3.14005(b) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves).

FIGURE NO. 2: 28 TAC §3.14004

Deficiency reserves-the excess, if greater than zero, of the minimum reserves calculated in accordance with the principles of Insurance Code, Article 3.28, §10. over the basic reserves.

Maximum valuation interest rates-the interest rates defined in Insurance Code, Article 3.28, §5(b)(1), Computation of Minimum Standard by Calendar Year of Issue, that are to be used in determining the minimum standard for the valuation of life insurance policies.

NAIC-National Association of Insurance Commissioners.

1980 CSO valuation tables-the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

Scheduled gross premium-the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in §3.14007(a)(3) of this title (relating to Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period of More than Five Years) if any, or else the minimum premium described in §3.14007(a)(4) of this title (relating to Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period of More than Five Years).

Segmented reserves-reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(A) the present value of the death benefits within the segment, plus

(B) the present value of any unusual guaranteed cash value (see §3.14006(d) of this title (relating to Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies)) occurring at the end of the segment, less

(C) any unusual guaranteed cash value occurring at the start of the segment, plus

(D) for the first segment only, the excess of the subparagraph (A) of this paragraph over subparagraph (B) of this paragraph, as follows:

(i) a net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) a net one year term premium for the benefits provided for in the first policy year. The length of each segment is determined by the "contract segmentation method," as defined in this section. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. For both basic reserves and deficiency reserves computed by the segmented method, present values must include future benefits and net premiums in the current segment and in all subsequent segments.

Tabular cost of insurance-the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

Ten-year select factors-the select factors in Insurance Code, Article 3.28.

Unitary reserves-the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(A) guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(B) modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of subparagraph (A) of this paragraph over subparagraph (B) of this paragraph, as follows:

(i) a net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) a net one year term premium for the benefits provided for in the first policy year.

(C) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

Universal life insurance policy-any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

§3.14005. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves.

(a) At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this subchapter and promulgated by regulation by the commissioner for this purpose). If select mortality factors are elected, they may be:

(1) the ten-year select mortality factors incorporated in Insurance Code, Article 3.28, The Standard Valuation Law;

(2) 150% of the base select mortality factors adopted by reference in §3.14002 of this title (relating to Adoption by Reference of Tables of Base Select Mortality Factors); or

(3) 150% of the base select mortality factors adopted by reference in §3.14002 of this title (relating to Adoption by Reference of Tables of Base Select Mortality Factors) for the first ten policy years; then linearly graded from the resulting tenth year factor to 100% at policy year sixteen; or

(4) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for the purpose of calculating basic reserves.

(b) Deficiency reserves are required in addition to the basic reserves under the conditions described in this subsection.

(1) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner). If select mortality factors are elected, they may be:

(A) the ten-year select mortality factors in Insurance Code, Article 3.28;

(B) 120% of the base select mortality factors adopted by reference in §3.14002 of this title (relating to Adoption by Reference of Tables of Base Select Mortality Factors);

(C) 120% of the base select mortality factors adopted by reference in §3.14002 of this title (relating to Tables of Base Select Mortality Factors) for the first ten policy years; then linearly graded from the resulting tenth year factor to 100% at policy year sixteen;

(D) Any other table of select mortality factors adopted by the NAIC after the effective date of this regulation and promulgated by regulation by the commissioner for the purpose of calculating deficiency reserves.

(2) Notwithstanding the above, if the length of the first segment as determined by the contract segmentation method for the basic reserves is not greater than five years (safe harbor), then for that length of time measured from issue, for either the unitary method or the contract segmentation method, gross premiums need not be substituted for net premiums even if the gross premiums are less than the net premiums. For subsequent periods, gross premiums must be

substituted for net premiums if the gross premiums are less than the corresponding net premiums.

(3) For any policies for which the company chooses to use the "safe harbor" describe in paragraph (2) of this subsection, the company must demonstrate annually to the satisfaction of the commissioner, by submitting a statement of actuarial opinion signed by the appointed actuary, that the reserves held for all such policies are adequate.

(c) In applying percentages to the base select mortality factors:

(1) do not round any result; and

(2) set equal to 100 any result that exceeds 100.

(d) This subsection applies to both basic reserves and deficiency reserves. Any set of base select mortality factors may be used only for the first segment. However, if the first segment is less than ten years, the appropriate ten-year select mortality factors may be used thereafter through the tenth policy year from the date of issue.

(e) In determining basic reserves or deficiency reserves, gross premiums without policy fees may be used where the calculation involves the gross premium but only if the policy fee is a level dollar amount for the entire premium-paying period of the policy. In determining deficiency reserves, policy fees may be included in gross premiums even if not included in the actual calculation of basic reserves.

§3.14006. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies)

(a) Basic Reserves. Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy must use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either one of the two adjustments described in paragraphs (1) or (2) of this subsection may be made.

(1) An insurer may use the adjustments described in this paragraph.

(A) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment; and

(B) subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) An insurer may use the adjustments described in this paragraph.

(A) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and

(B) subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(b) Deficiency Reserves.

(1) The deficiency reserve at any duration shall be calculated:

(A) on a unitary basis if the corresponding basic reserve determined by subsection (a) of this section is unitary;

(B) on a segmented basis if the corresponding basic reserve determined by subsection (a) of this section is segmented; or

(C) on the segmented basis if the corresponding basic reserve determined by subsection (a) of this section is equal to both the segmented reserve and the unitary reserve.

(2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality specified in subsection (b) of this section and rate of interest.

(3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in subsection (b) of this section.

(4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(c) Minimum Value. Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance must use the same valuation mortality table, select mortality factor and interest rates as that used for the calculation of both the segmented and the unitary reserves. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(d) Unusual Pattern of Guaranteed Cash Surrender Values.

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

(A) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(i) the date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(ii) the mandatory expiration date of the policy; and

(B) the net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and

(C) the net to gross ratio is equal to subparagraph (i) of this paragraph divided by subparagraph (ii) of this paragraph as follows:

(i) the present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period;

(ii) the present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.

(3) For purposes of this subsection , a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

(A) 110% of the scheduled gross premium for that year;

(B) 110% of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

(C) 5% of the first policy year surrender charge, if any.

(e) Optional Exemption for Yearly Renewable Term (YRT) Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c) of this section.

(3) Deficiency reserves.

(A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A) of this paragraph.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if:

(A) the reinsurance premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) for any given year are independent of both the premium rates and the plan of the original policy; and

(B) only the mortality risk is reinsured.

(f) Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the approach described in paragraphs (1) and (2) of this subsection for reserves for attained-age-based YRT life insurance policies may be used.

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c) of this section.

(3) Deficiency reserves.

(A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A) of this paragraph.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose.

(5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(A) the premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

(B) the premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

(A) the initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(B) the initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

(C) after the initial period of coverage, the policy meets the conditions of paragraph (5) of this subsection.

(7) If this election is made, this approach must be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this subchapter.

(g) Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Polices. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the conditions described in paragraphs (1) - (3) of this subsection are met.

(1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, and for each n-year period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(2) the guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the

1980 CSO Table with or without the ten-year select mortality factors; and

(3) there are no cash surrender values in any policy year.

(h) Exemption from Unitary Reserves for Certain Juvenile Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the conditions described in paragraphs (1) - (3) of this subsection are met, based upon the initial current premium scale at issue.

(1) At issue, the insured is age twenty-four or younger;

(2) until the insured reaches the end of the juvenile period, which must occur at or before age twenty-five, the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) after the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

§3.14007. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period of More Than Five Years.

(a) General.

(1) Policies with a secondary guarantee include:

(A) a policy with a guarantee that the policy will remain in force at the original schedule of benefits over a period exceeding five years, subject only to the payment of specified premiums;

(B) a policy in which the minimum premium at any future duration beyond the end of the fifth policy year is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this regulation by the NAIC and promulgated by regulation by the commissioner for this purpose; or

(C) a policy with any combination of paragraphs (A) and (B) of this paragraph.

(2) A secondary guarantee period is the longest period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. Secondary guarantees that are unilaterally extended by the insurer after issue shall be considered to have been made at issue. Reserves described in subsections (b) and (c) of this section must be recalculated from issue to reflect the extensions.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation must use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

(5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in §3.14005(b)(1)(B), (C), and (D) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) may not be used to calculate the one-year valuation premiums.

(b) Basic Reserves for the Secondary Guarantees. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in §3.14004(b) of this title (relating to Definitions).

(c) Deficiency Reserves for the Secondary Guarantees. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in §3.14006(b) of this title (Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Premiums or Guaranteed Nonlevel Benefits (Other Than Universal Life Policies) with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) Minimum Reserves. The minimum reserves during the secondary guarantee period are the greater of:

(1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(2) The minimum reserves required by other rules or subchapters governing universal life plans.

§3.14008. Effective Date.

This subchapter is effective December 31, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714858
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–6327

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Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Financial Analysis

28 TAC §7.67

The Texas Department of Insurance proposes new §7.67 concerning annual and quarterly statement blanks, other reporting forms, diskettes or alternative electronic method of filing and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes or alterna-

tive electronic method of filing. These statement blanks, other reporting forms, and diskettes or alternative electronic method of filing are required for reporting, in 1998, the financial condition and business operations and activities conducted during the 1997 and 1998 calendar years. The new section will replace repealed 7.67 which concerned the adoption of the 1988 annual statement filings and was repealed in the October 15, 1996 issue of the *Texas Register* (21 TexReg 10212). The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; and adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners as directed. The department has filed with the Office of the Secretary of State, *Texas Register* Division, copies of the annual and quarterly statement blanks, other reporting forms, and manuals proposed for adoption by reference. Other copies are available for inspection in the office of the Financial Monitoring Activity of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas.

Jose Montemayor, associate commissioner for the financial program, has determined that for the first year the section will be in effect, there will not be fiscal implications for state government as a result of enforcing or administering the section. There will be fiscal implications in connection with the filing of annual statements as a result of Insurance Code, Article 1.11. Under Article 1.11, insurers are required to file a copy of their annual statement with the National Association of Insurance Commissioners (NAIC), however, Article 1.11 also provides that insurers cannot be required to pay any costs or expenses (other than the expense of preparing and furnishing the annual statement to the NAIC) for the filing of the annual statement with the NAIC, therefore such costs are paid by the department to the NAIC. There will be no effect on local government or local employment for the first five-year period the section will be in effect. There will not be fiscal implications for the remaining four years the section is in effect since the section is applicable only to financial reporting during 1998.

Mr. Montemayor has also determined that, for each year of the first five years this section, as proposed, is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. Such insurers and other regulated entities are generally required by statute to provide the department with annual reports on their operations. These reports generally summarize information already captured or created by the insurer or other regulated entity in its normal course of business. The probable economic cost to insurers and other regulated entities (excluding health maintenance organizations) required to comply with this proposed section is estimated to be no more than $3,500. Such estimated cost may be lower based upon factors such as the type of company (e.g. life, accident and health, or property and casualty); the size of the company (e.g. large or small); the type of business written within a company, and the cost of software offered by vendors. The probable economic cost to health maintenance organizations required to comply with this proposed section is estimated to be no more than $1,200. Such estimated cost may be lower based upon factors such as the size of the health maintenance organization and the cost of the software offered by vendors. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by this section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director - Financial Monitoring Activity, Mail Code 303-1A, Texas Department of Insurance, P. O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code, Articles 1.03A, 1.10, 1.11, 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.49, 21.52F, 21.54, 22.06, 23.02, and 23.26. Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.49, 21.54, 22.06, 23.02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 21.52F authorizes the commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the articles. Article 1.03A provides that the commissioner may adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute for general and uniform application.

The following articles of the Insurance Code will be affected by this proposed section: Articles 1.10, 1.11, 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.49, 21.52F, 21.54, 22.06, 23.02, and 23.26.

§7.67. Requirements for Filing the 1997 Annual and 1998 Quarterly Statements, Other Reporting Forms, and Diskettes or alternative electronic method of filing.

(a) Scope. This section provides insurers and other regulated entities with the filing requirements for the 1997 annual statement, 1998 quarterly statements, other reporting forms, and diskettes or alternative electronic method of filing necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Workers' Compensation Insurance Fund , and the Texas Windstorm Insurance Association. The commissioner of insurance adopts by reference the 1997 annual and 1998 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the Texas Department of Insurance, Financial Monitoring Activity, Mail Code 303-1A, P. O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the National Association of Insurance Commissioners (NAIC) by completing the appropriate annual and quarterly statement blanks, prepared with laser quality print (hand written copies must be prepared legibly using black ink), other reporting forms, and diskettes or alternative electronic method of filing following the applicable instructions as outlined in subsections (c) through (l) of this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Association edition - Blanks and forms promulgated by the National Association of Insurance Commissioners.

(2) Commissioner - The commissioner of insurance appointed under the Texas Insurance Code, Article 1.09.

(3) Department - The Texas Department of Insurance.

(4) Insurer - A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(5) NAIC - The National Association of Insurance Commissioners.

(6) Texas edition - Blanks and forms promulgated by the commissioner of insurance.

(c) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital services corporation and the Texas Health Insurance Risk Pool (Article 3.77) shall complete and file the following blanks, forms, and diskettes or alternative electronic method of filing for the 1997 calendar year and the first three quarters of the 1998 calendar year. The forms, reports and diskettes or alternative electronic method of filing identified in paragraphs (1)(A)-(F); (2)(A),(B),(H); and (3)(A)-(G) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Instructions, Life, Accident and Health*, except as provided by paragraph (4) of this subsection. The diskettes or alternative electronic method of filing identified in paragraph (3)(H) and (I) shall be completed in accordance with the current *NAIC Annual Statement Diskette Filing Specification-Life, Accident & Health*, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed both with the department and the NAIC include the following:

(A) Annual Statement (association edition, with a blue colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998);

(B) Annual Statement of the Separate Accounts (association edition, with a green colored cover made of minimum 65lb. paper) (required of companies maintaining separate accounts), the 9 inch by 14 inch size, to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998);

(C) Trusteed Surplus Statement (association edition, Life, Accident and Health Supplement) (required of the U. S. branch of an alien insurer), 9 inch by 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1998;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1998 (stipulated premium insurance companies, May 1, 1998);

(E) Life and Accident and Health Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(F) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection;

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(B) Supplemental Compensation Exhibit (association edition) 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1998 (stipulated premium companies, April 1, 1998);

(C) Annual Statement (Texas edition, with a green colored cover made of minimum 65lb. paper) (required of companies

writing prepaid legal business in 1997), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1998;

(D) Affidavit in Lieu of Annual Statement (required of companies authorized to write prepaid legal business that did not write such business in 1997), to be filed on or before March 1, 1998;

(E) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998);

(F) Analysis of Surplus, for life, accident and health insurers, to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998); and

(G) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1998 (stipulated premium companies, April 1, 1998).

(H) The Texas Health Insurance Risk Pool shall complete and file the following:

(i) *NAIC Annual Statement Life, Accident and Health* Annual Statement (association edition),with a blue colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1998. However, for the 1997 annual statement, only pages 1 - 5, 12, and the Notes to Financial Statements are required to be completed and filed on or before March 1, 1998.; and

(ii) Life and Accident and Health Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998);

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), 9 inch by 14 inch size, to be filed on or before April 1, 1998;

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), the 9 inch by 14 inch size, to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998), in addition to the Long-Term Care Experience Reporting Forms included in the annual statement required by paragraph (1)(A) of this subsection;

(D) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), the 9 inch by 14 inch size, to be filed on or before April 1, 1998 (stipulated premium insurance companies, April 1, 1998);

(E) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), the 9 inch by 14 inch size, to be filed on or before April 1, 1998;

(F) Adjustments to the Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), the 9 inch by 14 inch size, to be filed on or before April 1, 1998;

(G) Schedule DS (association edition) (required only of companies that have included equity in the undistributed income of unconsolidated subsidiaries in its net gain/(loss) from operations), the 9 inch by 14 inch size, to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998);

(H) diskettes containing computerized annual statement data, to be filed on or before March 1, 1998 (stipulated premium insurance companies, April 1, 1998); and

(I) diskettes containing computerized quarterly statement data , to be filed on or before May 15, August 15, and November 15, 1998. (NOTE: In the event that, subsequent to the effective date of this section, an alternative method of filing this quarterly statement data becomes available, such alternative method may be used to satisfy the requirements of this diskette filing.) A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly diskettes with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Texas domestic life, accident and health companies with more than $30 million in direct premiums in 1997 must establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1997 *NAIC Annual Statement Instructions, Life, Accident and Health Companies.* Texas domestic companies with $30 million or less in direct premiums may establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1997 *NAIC Annual Statement Instructions, Life, Accident and Health Companies* or they must value bonds and preferred stocks in compliance with the provisions of §7.16 of this title (relating to NAIC Purposes and Procedures of the Securities Valuation Office Manual) concerning companies not maintaining an Asset Valuation Reserve or Interest Maintenance Reserve.

(B) The statement of actuarial opinion should follow the guidelines and standards for statements of actuarial opinion prescribed by regulation authorized by Section 3, Actuarial Opinion of Reserves of the Standard Valuation Law as amended by the NAIC in December 1990, unless exempted. For those companies exempted from such regulation, instructions 1 - 12, established by the NAIC, must be applied.

(C) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(d) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement under (d)(1)(A) for

the 1996 calendar year or had gross written premiums in 1997 in excess of $5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than or in addition to Insurance Code, Article 8.24, domestic joint underwriting association, the Texas Workers' Compensation Insurance Fund created under Article 5.76-3, and the Texas Windstorm Insurance Association shall complete and file the following blanks, forms, and diskettes or alternative electronic method of filing for the 1997 calendar year and the first three quarters of the 1998 calendar year. The forms, reports, and diskettes or alternative electronic method of filing identified in paragraphs (1)(A)-(H); (2)(A),(B),(K); and (3)(A)-(D) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Instructions, Property and Casualty*, except as provided by paragraph (4) of this subsection. The diskettes or alternative electronic method of filing identified in paragraph (3)(E) - (G) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Diskette Filing Specification-Property/Casualty*, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition, with a yellow colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(B) Trusteed Surplus Statement (association edition, Property and Casualty Supplement) (required of the U. S. branch of an alien insurer), 9 inch by 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1998;

(C) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1998;

(D) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(E) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(F) Property and Casualty Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998;

(G) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection; and

(H) Combined Property/Casualty Annual Statement (association edition, with a yellow colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before May 1, 1998, including the Insurance Expense Exhibit. This form is required only for those affiliated insurers that wrote more than $35 million in direct premiums, as a group, in 1997 as defined in Schedule T of the Annual Statement.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(B) Supplemental Compensation Exhibit (association edition) 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(C) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page six of the annual statement required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1998;

(D) Annual Statement (Texas edition, with a green colored cover made of minimum 65lb. paper) (required of companies writing prepaid legal business in 1997), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1998;

(E) Affidavit in Lieu of Annual Statement (required of companies authorized to write prepaid legal business that did not write such business in 1997), to be filed on or before March 1, 1998;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(G) Analysis of Surplus, for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1998;

(H) Supplement for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page seventeen of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1998;

(I) Texas Supplemental A for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page nine of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1998 ; and

(J) Form ALT/P/WC, Application for Alternative Excess Statutory Over Statement Reserves for Workers' Compensation (required of deductible plan workers' compensation writers if applying for an alternative basis of calculating the excess statutory over statement reserves for workers' compensation business), to be filed on or before January 31, 1998;

(K) The Texas Windstorm Insurance Association (Article §21.49) shall complete and file the following:

(i) Annual Statement, (association edition, with a yellow colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before June 1, 1998. except as provided by paragraph (4) of this subsection;

(ii) Property and Casualty Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998; and

(iii) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1998;

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 1998;

(B) Insurance Expense Exhibit (association edition), the 9 inch by 14 inch size, to be filed on or before April 1, 1998;

(C) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or health

business), 9 inch by 14 inch size, to be filed on or before April 1, 1998;

(D) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 9 inch by 14 inch size, to be filed on or before April 1, 1998;

(E) diskettes containing computerized annual statement data, to be filed on or before March 1, 1998;

(F) diskettes containing combined annual statement data, to be filed on or before May 1, 1997; and

(G) diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1998. (NOTE: In the event that, subsequent to the effective date of this section, an alternative method of filing this quarterly statement data becomes available, such alternative method may be used to satisfy the requirements of this diskette filing.)

(4) The following provisions shall apply to all filings required by paragraphs (1) - (3) of this subsection.

(A) No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed. In prior years, any company that claimed loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, as of December 31, 1991, was allowed to claim such reserve discounts at the applicable percentage. The applicable percentages for claiming such loss reserve discounts were 100% for 1992, 75% for 1993, 50% for 1994, 25% for 1995, 0% for 1996 and subsequent years. In no event was the dollar amount of discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, claimed as of December 31, 1991, and subject to the applicable percentage, allowed to be increased as of December 31, 1992 and thereafter. The commissioner shall have the authority to determine the appropriateness of, and may disapprove, discounts taken as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims.

(B) The commissioner shall have the authority to determine the appropriateness of, and may disapprove, anticipated salvage and subrogation.

(C) Since workers' compensation legislation enacted by the 71st Texas Legislature, effective January 1, 1991, and other subsequent legislation, may have affected the pricing and loss ratios for workers' compensation business written in the State of Texas, some insurers may be exempt from establishing the entire excess of statutory reserves over statement reserves, also known as the Schedule P penalty reserve, as would otherwise be required by the *NAIC Annual Statement Instructions, Property and Casualty* . Specifically, Texas domestic insurers that wrote workers' compensation in Texas, but no state other than Texas, in years 1995, 1996 and 1997 and whose loss experience prior to 1994 would require the establishment of a Schedule P penalty reserve using a loss ratio greater than 65% may calculate the reserve based on a loss ratio of 65%. The exemption herein described shall only be for the 1997 annual and 1998 interim financial statements. Reserving in this manner is intended to be consistent with the regulatory desire to attain competitive rates for workers' compensation written in Texas.

(D) Insurers meeting certain eligibility criteria and not claiming the exemption provided in paragraph (4)(C) of this subsection may apply for approval of an alternative basis of calculating the Excess of Statutory Over Statement Reserve, also known as the Schedule P penalty reserve, for workers' compensation business. The application for an alternative basis for calculating this reserve applies only to workers' compensation business written pursuant to deductible plans authorized by Insurance Code, Article 5.55C.

(i) Eligibility is generally available to insurers that are domiciled or commercially domiciled in Texas and that demonstrate that their standard premium, prior to application of deductible credits, written pursuant to deductible plans was at least 80% of total standard premium for all workers' compensation business for each of the years for which an alternative calculation is requested.

(ii) To apply for an alternative basis of calculating the penalty reserve, an eligible insurer must complete Form ALT/P/WC, Application for Alternative Excess of Statutory Over Statement Reserve for Workers' Compensation. Forms may be obtained by writing the Financial Monitoring Activity, Texas Department of Insurance, MC 303-1A, P.O. Box 149099, Austin, Texas 78714-9099, or calling (512) 322-5002. Completed applications must be filed with the department on or before January 31, 1998.

(iii) The commissioner may grant an exception or alternative to requiring the full Schedule P penalty reserve for workers' compensation business upon finding such treatment is warranted based on the insurer's application. Insurers that do not obtain the prior written approval of the department for an alternative basis of calculating the Schedule P penalty reserve as provided in the subparagraph shall calculate the penalty reserve in accordance with the current *NAIC Annual Statement Instruction, Property and Casualty*.

(E) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this section and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this section shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(e) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes for the 1997 calendar year and the first three quarters of the 1998 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(E); (2)(A),(B); and (3)(A),(B) and (D) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Instructions, Fraternal*, except as provided by paragraph (4) of this subsection. The diskettes identified in paragraph (3)(C) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Diskette Filing Specification-Fraternal*, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition, with a brown colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(B) Annual Statement of the Separate Accounts (association edition, with a green colored cover made of minimum

65lb. paper) (required of companies maintaining separate accounts), the 9 inch by 14 inch size, to be filed on or before March 1, 1998;

(C) Trusteed Surplus Statement (association edition, Fraternal Supplement) (required of the U. S. branch of an alien insurer), 9 inch by 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1998;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1998; and

(E) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition) 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(B) Fraternal Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998;

(C) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(D) Analysis of Surplus, for fraternal benefit societies, to be filed on or before March 1, 1998;

(E) Fraternal Benefit Societies - Supplement to Valuation Report, to be filed on or before June 30, 1998; and

(F) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1998.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 1998;

(B) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), the 9 inch by 14 inch size, to be filed on or before March 1, 1998, in addition to the Long-Term Care Experience Reporting Forms included in the annual statement required in paragraph (1)(A) of this subsection;

(C) diskettes containing computerized annual statement data, to be filed on or before March 1, 1998; and

(D) Fraternal Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), the 9 inch by 14 inch size, to be filed on or before April 1, 1998.

(4) The following provisions shall apply to the filings required in paragraph (1) - (3) of this subsection.

(A) Texas domestic fraternal companies with more than $30 million in direct premiums in 1997 must establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1997 *NAIC Annual Statement Instructions Fraternal*. Texas domestic fraternal companies with $30 million or less in direct premiums may establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1997 *NAIC Annual Statement Instructions Fraternal* or they must value bonds and preferred stocks in compliance with the provisions of §7.16 of this title (relating to NAIC Purposes and Procedures of the Securities Valuation Office Manual) concerning companies not maintaining an Asset Valuation Reserve or Interest Maintenance Reserve.

(B) Since fraternals are exempted in Texas from the requirements of Section 3 Actuarial Opinion of Reserves of the Standard Valuation Law as amended by the NAIC in December 1990, the statement of actuarial opinion for fraternals should follow instructions 1 - 12, established by the NAIC.

(C) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(f) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 1997 calendar year and the first three quarters of the 1998 calendar year. The reports and forms identified in paragraphs (1)(A), (B); (2)(A), (B), and (F); and (3)(A) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Instructions, Title*, except as otherwise provided by paragraph (4) of this subsection. The diskette identified in paragraph (3)(B) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Diskette Filing Specification- Title*, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, with a salmon colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1998; and

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1998.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(B) Title Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998.

(C) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(D) Analysis of Surplus, for title insurers, to be filed on or before March 1, 1998;

(E) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an

attachment to page six of the annual statement as required in paragraph (1)(A) of this subsection), to be filed on or before March 1, 1998; and

(F) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 9 inch by 14 inch size, to be filed on or before March 1, 1998.

(3) Reports to be filed only with the NAIC.

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 1998.

(B) diskettes containing computerized annual statement data, to be filed on or before March 1, 1998.

(4) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(g) Requirements for health maintenance organizations. Each health maintenance organization and non-profit health corporation shall complete and file the following blanks and forms, and diskettes for the 1997 calendar year and the first three quarters of the 1998 calendar year. The forms, reports and diskettes identified in paragraphs (1)(A)-(C) and (2)(A),(B) of this subsection shall be completed in accordance with the *NAIC Annual Statements Instructions, Health Maintenance Organizations*. The forms, reports and diskettes identified in paragraphs (1)(A), (2)(A)-(C), (E)-(G), and (3) of this subsection shall be completed in accordance with Annual and Quarterly HMO Supplement Instructions (provided by the department). The diskettes identified in paragraph (3) of this subsection shall be completed in accordance with the current *NAIC Annual Diskette Filing Specification - Health Maintenance Organization.*

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition, HMO with an orange colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1998;

(B) Management's Discussion and Analysis, (a narrative document setting forth information which enable regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1998;

(C) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all health maintenance organizations), to be attached to the annual statement required by paragraph (1)(A) of this subsection;

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(B) HMO Quarterly Statement (association edition), 8 1/2 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1998;

(C) HMO Supplement, 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1998;

(D) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1998;

(E) Department formatted diskettes containing annual statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before March 1, 1998; and

(F) Department formatted diskettes containing quarterly statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before May 15, August 15, and November 15, 1998.

(3) Reports and diskettes to be filed only with the NAIC. The diskettes containing computerized annual statement data must be filed on or before March 1, 1998;

(4) In the event of a conflict between the Insurance Code, any existing departmental rule, form, or instruction, or any specific requirement of this subsection required in paragraphs (1)-(3), and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(h) Requirements for farm mutual insurers not subject to the provisions of subsection (d) of this section relating to requirements for property and casualty insurers. Each farm mutual insurance company shall file the following completed blanks and forms for the 1997 calendar year with the department only:

(1) Annual statement (Texas edition, with a tan colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1998;

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1998;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items), to be attached to the annual statement required by paragraph (1) of this subsection, unless otherwise exempted.

(i) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1997 calendar year with the department only:

(1) Annual Statement (Texas edition, with an orange colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before April 1, 1998, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, and 7. All other pages are required;

(2) Texas Overhead Assessment Form, to be filed on or before April 1, 1998;

(3) Release of Contributions Form, to be filed on or before April 1, 1998;

(4) 3 1/2% Chamberlain Reserve Table (Reserve Valuation), to be filed on or before April 1, 1998;

(5) Reserve Summary (1956 Chamberlain Table 3 1/2%), to be filed on or before April 1, 1998;

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year, to be filed on or before April 1, 1998; and

(7) Summary of Inventory of Insurance In Force by Age and Calculation of Net Premiums, to be filed on or before April 1, 1998.

(j) Requirements for non-profit legal service corporations. Each non-profit legal service corporation shall file the following completed blanks and forms for the 1997 calendar year with the department only;

(1) Annual Statement (Texas edition, with a green colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1998; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1998.

(k) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a Certificate of Authority issued under Texas Insurance Code, Article 8.24, shall complete and file the following blanks and forms for the 1997 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the current *NAIC Annual Statement Instructions, Property and Casualty*, except as provided by this section. An actuarial opinion is not required. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition, with a yellow colored cover made of minimum 65lb. paper), 9 inch by 14 inch size, provided, however, only pages 1 - 4, 15, 17, 18, 19 and 139 are required to be completed and filed on or before March 1, 1998;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1998;

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the current year's annual statement, to be filed on or before June 30, 1998; and

(4) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1998.

(l) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715036
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–6327

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Subchapter D. Risk Based Capital and Surplus

28 TAC §7.410

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance proposes the repeal of §7.410 concerning minimum risk based capital and surplus requirements for certain property/casualty insurers. The repeal is necessary to eliminate unnecessary provisions and to enable the Texas Department of Insurance simultaneously to adopt new §7.410 which replaces the repealed section with a new property/casualty risk based capital formula. Notification of the proposed new section appears elsewhere in this issue of the *Texas Register*.

Jose Montemayor, Associate Commissioner - Financial Program, has determined that, for the first five-year period the repeal of the section will be in effect, there will be no fiscal implications for state or local government or small business as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy.

Mr. Montemayor also has determined that, for each year of the first five years the repeal of the section will be in effect, the public benefit anticipated as a result of the repeal will be more efficient monitoring of the financial condition of insurance companies. There will be no economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director of Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099.

The repeal of the section is proposed under the Insurance Code, Articles, 2.01, 2.02, 2.20, 1.03A and 1.10. Article 2.01, 2.02 and 2.20 provide that the commissioner may adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory levels to assure financial solvency of insurers for the protection of insurers. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by a statute. Article 1.10, §5 addresses the duties of the department when an insurers solvency is impaired.

Insurance Code, Articles 2.01, 2.02, 2.20, 1.03A and 1.10, are affected by the repeal of this section.

§7.410. Minimum Risk Based Capital and Surplus Requirements for Stock Property/Casualty Insurers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714911

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 22, 1997

For further information, please call: (512) 463–6327

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28 TAC §7.410

The Texas Department of Insurance proposes new §7.410 concerning minimum risk based capital and surplus requirements for certain property/casualty insurers. The proposed new rule is necessary to implement an amendment made by the 75th Legislature, 1997 to Insurance Code, Article 2.20 which expanded the scope of Article 2.20 to include property/casualty insurers that are not required to have capital stock and are licensed to do business in more than one state. The new rule replaces existing §7.410 and the formula on form RBC/PC promulgated in that section with a new property/casualty risk based capital formula. The proposed new risk based capital formula will provide the department with a more widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for an insurance company to support its overall business operations in consideration of its size and risk exposures. The department is proposing the adoption by reference of the *1997 NAIC Risk Based Capital Report Including Overview and Instructions for Companies*. The department has filed with the Office of the Secretary of State, Texas Register Division, copies of the documents proposed for adoption by reference. Other copies are available for inspection in the Financial Monitoring Activity of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin, Texas. The existing §7.410 is simultaneously proposed for repeal elsewhere in this issue of the *Texas Register*.

Jose Montemayor, associate commissioner for the financial program, has determined that, for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Montemayor also has determined that, for each year of the first five years the amended section will be in effect, the public benefit resulting from enforcing the section will be the protection of policyholders by having greater consistency in monitoring the financial solvency of insurers. In addition, the regulatory burden on insurers which do business in other states will be reduced since there will be increased uniformity among states by using the same risk based capital formula. A comparison of the results of the existing formula to the proposed formula indicates that the risk-based capital of most insurers will be acceptable under the proposed formula. Mr. Montemayor also has determined that for each of the first five years the amended section will be in effect the anticipated economic cost to persons who must comply with the section will be the cost of $150 for acquiring the Risk Based Capital Filing Kit and the labor cost to transfer the information in the insurer's records to the formula. That cost will vary depending on the size of the insurer, its investments and risks assumed, but the cost should not exceed $1,500 per company. For those insurers that already file the report with other states, they will incur only the cost of providing the department a copy of the report. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large companies.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. BOX 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director of Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099.

The amendment is proposed under the Insurance Code, Articles, 2.01, 2.02, 2.20, 21.21, 1.03A and 1.10. Article 2.01, 2.02 and 2.20 provide that the commissioner may adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory levels to assure financial solvency of insurers for the protection of insurers. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department only as authorized by a statute. Article 21.21, §13 authorizes the commissioner to adopt rules necessary to regulate trade practices in the business of insurance. Article 1.10, §5 addresses the duties of the department when an insurers solvency is impaired.

The proposed amendment affects Insurance Code, Articles 1.10, 1.27, 1.32, 2.01, 2.02, 2.20, 21.21 and 21.44.

§7.410 Minimum Risk-Based Capital and Surplus Requirements for Property/Casualty Insurers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual financial statement - The annual statement (association edition) to be used by fire and casualty (property/casualty) insurance companies, as promulgated by the NAIC and as adopted by the commissioner under this chapter.

(2) Authorized Control Level - the number determined under the RBC formula in accordance with the RBC instructions.

(3) Commissioner - the commissioner of insurance of the Texas Department of Insurance.

(4) NAIC - National Association of Insurance Commissioners

(5) RBC formula - NAIC risk based capital formula.

(6) RBC instructions - *1997 NAIC Risk Based Capital Report including Overview and Instructions for Companies* published by the NAIC.

(7) Total adjusted capital - an insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed pursuant to the Insurance Code, and such other items, if any, as the RBC instructions provide.

(b) Scope. This section applies to all domestic, foreign, and alien property/casualty companies subject to the provisions of the Insurance Code, Articles 2.02, 2.20, and 21.44, excluding those insurers that are only authorized to write mortgage guaranty insurance in all states in which they are licensed and excluding those insurers that write business only in this state and are not required by law to have capital stock.

(c) Purpose. The purpose of implementing this risk-based capital and surplus provision is to require a minimum level of capital and surplus appropriate to the underwriting, financial, investment risks and other business and relevant risks assumed by an insurer.

(d) Adoption of RBC formula by reference and filing requirements. The commissioner adopts by reference the *1997 NAIC Property and Casualty Risk-Based Capital Report including Overview and Instructions for companies* which includes the RBC formula and the required diskettes. All companies subject to this section are required to file the diskettes with the NAIC in accordance with and by the due date specified in the RBC instructions.

(e) In the event of a conflict between the Insurance Code, any currently existing rule of the department or any specific requirement of this section, and the RBC formula and/or the RBC instructions, the Insurance Code, rule or specific requirement of this section shall take precedence and in all respects control. It is the express intent of this section that the adoption by reference of the RBC instructions not repeal or modify or amend any rule of the department or the Insurance Code.

(f) Actions of commissioner. The commissioner may take the following actions against an insurer who fails to maintain, at a minimum, 70% of authorized control level as calculated in accordance with the RBC instructions:

(1) order the insurer to cease writing new business;

(2) place the insurer in supervision or conservation;

(3) determine the insurer to be in hazardous financial condition as provided by the Insurance Code, Article 1.32, and § 8.3 of this title (relating to Hazardous Conditions);

(4) determine the insurer to be impaired as provided by the Insurance Code, Article 1.10, § 5; or

(5) apply any other sanctions provided by the Insurance Code or Title 28 of the Texas Administrative Code.

(g) Prohibition on Announcements. Except as otherwise required under the provisions of this rule, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to any component derived in the calculation, by any insurer, agent, broker or the person engaged in any manner in the insurance business would be misleading and is, therefore, prohibited.

(h) Prohibition on use in Ratemaking. The RBC instructions and any related filing are intended solely for use by the commissioner in monitoring the solvency of property/casualty insurers subject to this section and in taking needed for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

(i) Limitations. In no event shall the requirements of this section reduce the amount of capital and surplus otherwise required by provisions of the Insurance Code or Texas Administrative Code, or by authority of the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714912
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–6327

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Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas

28 TAC §9.1

The Texas Department of Insurance proposes an amendment to §9.1 which concerns the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (the Basic Manual). The amended section is necessary to reflect changes to the Basic Manual which the section will adopt by reference. The 75th Legislature adopted House Joint Resolution 31 proposing a constitutional amendment allowing home equity liens and reverse mortgages on Texas homestead property. By voter approval on November 4, 1997, Section 50, Article XVI, Texas Constitution was amended to provide for the extension of credit secured by a lien against the title of Texas homestead property. The department is proposing new procedural rules to the Basic Manual to facilitate the issuing of mortgagee title policies insuring home equity liens and reverse mortgages on homestead property. Proposed Procedural Rule P-44, relating to the Equity Loan Mortgage Endorsement (T-42); proposed Procedural Rule P-45, relating to the Texas Reverse Mortgage Endorsement (T-43); proposed Equity Loan Mortgage Endorsement T-42; and proposed Texas Reverse Mortgage Endorsement T-43 will enable title insurance companies to properly issue mortgagee policies for home equity and reverse mortgage loans on Texas homestead property. The Department will consider the adoption of new §9.1 in a public hearing under Docket Number 2324, scheduled for 9:00 a.m. on December 17, 1997 in Room 100 of the William P. Hobby, Jr. Building, 333 Guadalupe Street in Austin, Texas.

Robert R. Carter, Jr., deputy commissioner for the title insurance division, has determined that, for each year of the first five years the amendment is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendment. Mr. Carter has also determined that there will be no effect on local employment or the local economy.

Mr. Carter has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering and enforcing the amendment will be to ensure the appropriate endorsement language on title insurance policies covering home equity lending and reverse mortgage loans. There is no anticipated economic cost to individuals or business entities who are required to comply with the section as amended.

Comments on the proposed amendment must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Caroline Scott, Chief Clerk, Texas Department of Insurance, P. O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Robert R. Carter, Jr., Deputy Commissioner of Title, Mail Code 103-1T, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. The department has filed a copy of the proposed amendment with the *Texas Register*. Persons desiring copies can obtain them from the Texas Department of Insurance, Title Insurance Section, Mail Code 103-1T, P. O. Box 149104, Austin, Texas 78714-9104.

This amended section is proposed pursuant to the Insurance Code, Articles 9.07, 9.21, and 1.03A and Section 50, Article XVI, Texas Constitution. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules and regulations prescribing underwriting standards and practices, and to promulgate and enforce all other rules and regulations necessary to accomplish the purposes of chapter 9, concerning regulation of title insurance. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. By voter approval on November 4, 1997, Section 50, Article XVI, Texas Constitution was amended to permit an encumbrance against homestead property for certain extensions of equity credit. The Government Code, §§2001.04-2001.038 et seq. (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

The following statutes are affected by this proposal: Insurance Code, Articles 9.07 and 9.21

§9.1 Basic Manual Of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* as amended effective January 12, 1998 [~~September 1, 1997~~]. The document is published by and is available from Hart Information Services, 11500 Metric Boulevard, Austin, Texas 78758, and is available from and on file at the Texas Department of Insurance, Title Insurance Section, Mail Code 103-1T, 333 Guadalupe Street, Austin, Texas 78701-1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714927

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 122. Federal Operating Permits

Subchapter F. General Operating Permits

30 TAC §122.516

The Texas Natural Resource Conservation Commission (commission) proposes new §122.516, concerning the requirements for a Site-wide General Operating Permit (site-wide GOP or GOP). The commission has developed the proposed new section to provide a simplified alternate permitting mechanism for compliance with the operating permit program mandated by Title V of the Federal Clean Air Act (FCAA) Amendments of 1990. Title 40 Code of Federal Regulations, Part 70 (40 CFR 70) allows general permits as an alternate mechanism for numerous similar sources that are subject to Title V. Chapter 122 was promulgated in response to 40 CFR 70 and also allows this alternate mechanism. The new section will be included in Subchapter F, concerning General Operating Permits.

The rules regarding a Site-wide General Operating Permit are proposed for the entire State of Texas.

EXPLANATION OF THE PROPOSED RULE. Subchapter F of Chapter 122 currently lists five GOPs that the commission developed for major sources subject to the Texas Title V Operating Permits Interim Program. Four GOPs were developed for oil and gas operations listed under Standard Industrial Codes (SIC) 1311, 1321, 4922, and 4923 and are listed in §§122.511-122.514. A GOP was also developed for bulk fuel storage terminals (SIC 5171) and is listed in §122.515. Each GOP has three subsections containing qualification criteria, general conditions, and permit tables which list the requirements that apply to emission units at a site. Owners or operators of these major sources took advantage of this alternate permitting mechanism and submitted approximately 800 GOP applications to the commission for the interim program.

The proposed site-wide GOP will provide an alternate permitting mechanism to owners or operators of major sources subject to the Texas Title V Operating Permits Full Program (Full Program) which have only site-wide requirements. A site-wide requirement is a fairly simple requirement that applies uniformly to the emission units at the site. As an example, the Operating Permits Division has designated certain requirements of 30 TAC Chapter 111, concerning Control of Air Pollution from Visible Emissions and Particulate Matter, such as the opacity limits for stationary vents, as site-wide requirements. These requirements were designated as site-wide, since many sites have numerous stationary vents and each must comply with the appropriate opacity limit.

The proposed rule sets forth, in §122.516(a), the criteria that owners or operators of sites must meet in order to be authorized

to operated under this GOP. The qualification criteria consists of the conditions consistent with the limitations of a permit by rule and the intended use of this GOP. Since this proposed GOP is intended for use by sites which are subject to only site-wide requirements, sites requiring another federal operating permit to codify any other applicable requirements will not qualify for this proposed GOP. Additionally, since a permit by rule cannot contain compliance provisions or a schedule for a specific site, owners or operators must apply for a site operating permit that contains a compliance schedule if the site or units at the site are out of compliance at the time of application submittal. The qualification criteria also states that the site and the units located at a site may be authorized to operate under this GOP provided that they are not subject to any federal prevention of significant deterioration or federal nonattainment permits. Once the owner or operator has determined that the site and the units at the site qualify for this proposed general operating permit, a permit application, including a Form OP-1 (Texas Federal Operating Permit Initial Application), should be submitted to the commission for review at the time specified in §122.130. If the commission grants authority to operate under this GOP, after reviewing the permit application, the owner or operator must comply with §122.516(b)-(f), concerning site-wide requirements; general terms and conditions; recordkeeping terms and conditions; reporting terms and conditions; and compliance certification terms and conditions.

Provisions contained in §122.516(b) codify site-wide requirements for §111.111, concerning Visible Emissions; §§111.133-111.137, concerning Abrasive Blasting of Water Storage Tanks Performed by Portable Operations; §§111.141-111.149, concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots; §111.151, concerning Emission Limits on Nonagricultural Processes; and §§111.201, 111.205, 111.209, 111.213, 111.219, and 111.221, concerning Outdoor Burning. In order to exclude extraneous requirements from this GOP, the commission requests comments on these provisions with regard to whether sites intending to use this GOP are subject to these requirements.

In addition, provisions in §112.516(b) codify requirements for 30 TAC §§115.221, 115.222, and 115.224-115.226, concerning Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; §§115.234-115.236, concerning Control of Volatile Organic Compound Leaks From Transport Vessels; §§115.241, 115.242, 115.244, and 115.245-115.246, concerning Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities; §§115.252, 115.255, and 115.256, concerning Control of Reid Vapor Pressure of Gasoline; and §§115.541, 115.542, and 115.544-115.546, concerning Degassing or Cleaning of Stationary, Marine, and Transport Vessels. In order to exclude extraneous requirements, the commission also requests comments on these provisions with regard to whether sites intending to use this GOP are subject to these requirements.

A provision for Title 40 Code of Federal Regulations, Part 82 (40 CFR 82), concerning Protection of Stratospheric Ozone is also included in §122.516(b). Also included is a provision for Title 40 Code of Federal Regulations, Part 68 (40 CFR 68) relating to Chemical Accident Prevention Provisions (Risk Management Plans). In order to exclude extraneous requirements, the commission is requesting comments on inclusion of both provisions since they may not apply to sites that will be operating under this proposed GOP.

Additional site-wide requirements may exist for sites intending to use this GOP. The commission, therefore, is requesting comments to determine if additional site-wide requirements need to be included in this GOP.

The proposed rule provides general terms and conditions, in §122.516(c), that the owners or operators must meet following the initial granting of the authorization to operate under this GOP. These general terms and conditions are consistent with Chapter 122 requirements that a federal operating permit must codify. The general terms and conditions provide requirements relating to jurisdiction of the commission or local air pollution program representatives, provisional terms and conditions of the permit, property rights, state-only requirements, and emissions fees. The general terms and conditions also provide requirements relating to permit term length, information that must be maintained, location of the maintained information, and information requested or required by the executive director.

Recordkeeping terms and conditions are in §122.516(d) that the owners or operators must meet following the initial granting of the authorization to operate under this GOP. These recordkeeping terms and conditions are consistent with Chapter 122 requirements that a federal operating permit must codify. The recordkeeping terms and conditions provide requirements relating to maintenance of records, information contained in the records, and confidentiality of records.

The proposed rule sets forth, in §122.516(e), the reporting terms and conditions that the owners or operators must meet following the initial granting of the authorization to operate under this GOP. These reporting terms and conditions are consistent with Chapter 122 requirements that a federal operating permit must codify. The reporting terms and conditions provide requirements relating to monitoring, deviation, unauthorized emission, upset or maintenance, start-up, and shutdown reports.

Provisions in §122.516(f), relating to compliance certification terms and conditions, provide the requirements that owners or operators must meet following the initial granting of the authorization to operate under this GOP. These compliance certification terms and conditions are consistent with Chapter 122 requirements that a federal operating permit must codify. The compliance certification terms and conditions provide requirements relating to information that the annual compliance certification must contain and the date it must be submitted.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations, has determined that for each year of the first five-year period the new section is in effect, there will be no significant economic costs to state or local government as a result of administration or enforcement of the proposed new GOP. The commission may realize some reduced demand on agency resources and a related cost savings as a result of affected persons using the proposed alternative permitting mechanism. The actual fiscal implications to the commission will depend on the number, type, and location of potential applicants for this proposed GOP and have not been determined at this time.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years this proposed new section is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be the satisfaction of Title V of the FCAA Amendments of 1990 and 40 CFR 70 and more cost-effective regulation of sources of air emissions. The effect on persons subject to this section will be a reduction in the potential costs of submitting an application for a federal operating permit

and the operation of such permitted sites. The actual fiscal impact on any source subject to the provisions of Chapter 122 and which is eligible to be authorized to operate under a GOP cannot be determined prospectively. It is estimated, however, that affected persons will realize a reduction in cost of at least 20% for each GOP as a result of reducing the requirements for public notice procedures that are otherwise imposed for a federal operating permit. Additional savings are realized by the avoidance of engineering and consulting costs that would otherwise be required to determine the applicable requirements for a source that will now be codified in this proposed GOP. The potential cost savings will affect small businesses on the same basis as any larger business and will vary with the specific characteristics of the source authorized to operate under this proposed GOP.

DRAFT REGULATORY IMPACT ANALYSIS. The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this proposed new section under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to provide a simplified alternate permitting mechanism to owners or operators of major sources subject to the Full Program, having only site-wide requirements. The proposed new section will substantially advance this purpose, since it contains a general operating permit that is a permit by rule. It contains conditions and limitations with which owners or operators of the sources must comply. Adoption is achieved through the rulemaking process consistent with the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002. The GOP is also subject to the public participation requirements of 40 CFR 70. Each general operating permit, during the rulemaking process, will be subject to review by the United States Environmental Protection Agency (EPA), public petition, and affected state review. Since a review of the proposed general operating permit occurred during the rulemaking process, individual permit applications are not required to undergo public notice or EPA approval prior to sources being authorized to operate under the general operating permit. This then gives the regulated community and the commission a simplified permit application process and review process, respectively. Staff resources of the regulated community and the commission are, therefore, used more efficiently and a considerable time savings is provided to both parties. Interested members of the public are able to participate in the GOP development during the public comment period as well as by using the public participation options available under 40 CFR 70. Promulgation and enforcement of the proposed new section will not be a burden on private real property which will be subject of the section because it only codifies applicable requirements that may be used by owners or operators of sources subject to the Full Program in order to comply with Chapter 122 and 40 CFR 70. The proposed new section will not make existing regulations less stringent. This rulemaking proposal is also an exempt action under Texas Government Code, §2007.003(b), since the commission is fulfilling its requirement to implement a federally mandated program, Title V of the 1990 FCAA Amendments.

COASTAL MANAGEMENT PLAN. The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The permits issued under Chapter 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP goals and policies during the public comment period.

PUBLIC HEARING. A public hearing on this proposal will be held December 18, 1997, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97176-122-AI. Comments must be received by 5:00 p.m., December 22, 1997. For further information or questions concerning this proposal, contact Bruce McFarland of the Operating Permits Division, Office of Air Quality, (512) 239-1132.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The new section is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.054, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new section implements Texas Health and Safety Code, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

§122.516. Site-wide General Operating Permit.

(a) Qualification criteria.

(1) A site and the individual emission units located at a site may be authorized to operate under this general operating permit provided that:

(A) no emission unit located at the site is subject to any federal prevention of significant deterioration permits or federal nonattainment permits;

(B) the site and each emission unit located at the site are subject to only the applicable requirements codified in subsection (b) of this section;

(C) at the time of application submittal, the site and each emission unit located at the site are in compliance with the applicable requirements codified in subsection (b) of this section; and

(D) the site and each emission unit located at the site are not subject to any other permit or general operating permit issued under this chapter.

(b) Site-wide requirements.

(1) The permit holder shall comply with the requirements relating to general operating permits which are contained in this subchapter.

(2) The requirements of preconstruction authorizations referenced in the general operating permit application are not eligible for the permit shield provisions in §122.148 of this title (relating to Permit Shield).

(3) The permit holder shall comply with the following requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter).

(A) Visible emissions from stationary vents constructed on or before January 31, 1972, shall not exceed 30% opacity averaged over a six-minute period as required in §111.111(a)(1)(A) of this title (relating to Requirements for Specified Sources). Compliance with the visible emission standard of §111.111(a)(1)(A) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 Code of Federal Regulations (CFR) 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(B) Visible emissions from stationary vents constructed after January 31, 1972, shall not exceed 20% opacity averaged over a six-minute period as required in §111.111(a)(1)(B) of this title. Compliance with the visible emission standard of §111.111(a)(1)(B) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(C) Visible emissions from structures shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(7)(A) of this title. Compliance with the visible emission standard of §111.111(a)(7)(A) of this title shall be determined as required in §111.111(a)(7)(B)(i) of this title by Test Method 9 (40 CFR 60, Appendix A).

(D) Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in §111.111 of this title for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any ten-day period as required in §111.111(a)(1)(E) of this title. This exemption shall not apply to the emissions mass rate standard, as outlined in §111.151(a) of this title (relating to Allowable Emissions Limits).

(E) Visible emissions from all other sources not specified in §111.111(a)(1), (4), or (7) of this title shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(8)(A) of this title. Compliance with the visible emission standard of §111.111(a)(8)(A) of this title shall be determined by applying Test Method 9 (40 CFR 60, Appendix A) as required in §111.111(a)(8)(B)(i) of this title.

(F) Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR 60, Appendix A) to comply with §111.111(a)(1)(G) of this title shall be accomplished by completing the Texas Natural Resource Conservation Commission Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

(G) Contributions from uncombined water shall not be included in determining compliance with §111.111 of this title as required in §111.111(b) of this title.

(H) Emission limits on nonagricultural processes are as follows.

(i) Emissions of particulate matter from any source may not exceed the allowable rates specified in Table 1 as required in §111.151(a) of this title (relating to Allowable Emissions Limits). Figure 1: 30 TAC §122.516(b)(3)(H)(i)

(ii) Sources with an effective stack height (h_e) less than the standard effective stack height (H_e), as determined from Table 2, must reduce the allowable emission level by multiplying it by $[h_e/H_e]^2$ as required in §111.151(b) of this title. Figure 2: 30 TAC §122.516(b)(3)(H)(ii)

(iii) Effective stack height shall be calculated by the following equation as required in §111.151(c) of this title. Figure 3: 30 TAC §122.516(b)(3)(H)(iii)

(I) Open burning, as stated in §111.201 of this title (relating to General Prohibition), shall not be authorized unless the following requirements are satisfied:

(i) §111.205 of this title (relating to Exception for Fire Training);

(ii) §111.209(3) of this title (relating to Exception for Disposal Fires);

(iii) §111.213 of this title (relating to Exception for Hydrocarbon Burning);

(iv) §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(v) §111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(J) The permit holder for a site subject to the provisions of this chapter in which the site has materials handling, construction, roads, streets, alleys, and parking lots shall comply with the requirements of §§111.143, 111.145, 111.147, and 111.149 of this title (relating to Materials Handling; Construction and Demolition; Roads, Streets, and Alleys; and Parking Lots) if they are located in the following areas:

(i) the City of El Paso, including the Fort Bliss Military Reservation, except for training areas as referenced in

§111.141 of this title (relating to Geographic Areas of Application and Date of Compliance);

(ii) the area of Harris County located inside Beltway 8 (Sam Houston Tollway); or

(iii) the area of Nueces County outlined in the Group II state implementation plan for inhalable particulate matter.

(K) Abrasive blasting of water storage tanks performed by portable operations shall not be authorized unless the following state-only requirements are satisfied:

(i) §111.133(a)(1) and (2), (b), and (c) of this title (relating to Testing Requirements);

(ii) §111.135(a), (b), and (c)(1)-(4) of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead); and

(iii) §111.137(a), (b)(1)-(4), and (c) of this title (relating to Control Requirements for Surfaces with Coatings Containing Less than 1.0% Lead).

(4) The permit holder for a site in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment area that is subject to the provisions of this chapter and affected by the requirements of Chapter 115, Subchapter C of this title (relating to Volatile Organic Compound Transfer Operations) shall comply with the following.

(A) The requirements in the undesignated head Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title, are as follows:

(i) §115.221 of this title (relating to Emission Specifications);

(ii) §115.222 of this title (relating to Control Requirements);

(iii) §115.224 of this title (relating to Inspection Requirements);

(iv) §115.225(1)-(5) of this title (relating to Testing Requirements); and

(v) §115.226 of this title (relating to Recordkeeping Requirements).

(B) The requirements in the undesignated head Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title, at motor vehicle fuel dispensing facilities, constructed prior to November 15, 1992, with stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons are as follows:

(i) §115.224 of this title;

(ii) §115.226(1) and (2)(B) of this title; and

(iii) §115.227(1) of this title (relating to Exemptions).

(C) The requirements in the undesignated head Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title, at motor vehicle fuel dispensing facilities, constructed prior to November 15, 1992, with transfers to stationary storage tanks located at a facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, are as follows:

(i) §115.224 of this title;

(ii) §115.226 of this title; and

(iii) §115.227(2) of this title.

(D) The requirements in the undesignated head Control of Volatile Organic Compound Leaks From Transport Vessels in Chapter 115, Subchapter C of this title, are as follows:

(i) §115.234 of this title (relating to Inspection Requirements);

(ii) §115.235(1), (2), (3)(A), and (4) of this title (relating to Approved Test Methods); and

(iii) §115.236 of this title (relating to Recordkeeping Requirements).

(E) The requirements in the undesignated head Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title, are as follows:

(i) §115.241 of this title (relating to Emission Specifications);

(ii) §115.242 of this title (relating to Control Requirements);

(iii) §115.244 of this title (relating to Inspection Requirements);

(iv) §115.245(1), (2), (3), (5), and (6) of this title (relating to Testing Requirements); and

(v) §115.246 of this title (relating to Recordkeeping Requirements).

(5) The permit holder for a site in the El Paso ozone nonattainment area that is subject to the provisions of this chapter and affected by the requirements of Chapter 115, Subchapter C of this title (relating to Volatile Organic Compound Transfer Operations) shall comply with the following.

(A) The requirements in the undesignated head Control of Reid Vapor Pressure of Gasoline in Chapter 115, Subchapter C of this title, are as follows:

(i) §115.252 of this title (relating to Control Requirements);

(ii) §115.255 of this title (relating to Approved Test Methods); and

(iii) §115.256 of this title (relating to Recordkeeping Requirements).

(B) The requirements in the undesignated head Control of Reid Vapor Pressure of Gasoline in Chapter 115, Subchapter C of this title, at any stationary tank, reservoir, or other container used exclusively for the fueling of implements of agriculture are as follows:

(i) §115.255 of this title; and

(ii) §115.257(1) of this title (relating to Exemptions).

(C) The requirements in the undesignated head Control of Reid Vapor Pressure of Gasoline in Chapter 115, Subchapter C of this title, at a motor vehicle fuel dispensing facility are as follows:

(i) §115.252 of this title;

(ii) §115.255 of this title; and

(iii) Section 115.257(2) of this title.

(6) The permit holder for a site which degasses or cleans any transport vessel with a nominal storage capacity of 8,000 gallons or more in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment area that is subject to the provisions of this chapter shall comply with the following requirements in the undesignated head Degassing or Cleaning of Stationary, Marine, and Transport Vessels in Chapter 115, Subchapter F of this title (relating to Miscellaneous Industrial Sources):

(A) §115.541(a)(2) of this title (relating to Emission Specifications);

(B) §115.542(a) of this title (relating to Control Requirements);

(C) §115.544 of this title (relating to Inspection Requirements);

(D) §115.545(1)-(9) of this title (relating to Approved Test Methods); and

(E) §115.546 of this title (relating to Monitoring and Recordkeeping Requirements).

(7) For covered processes subject to 40 CFR and specified in 40 CFR, §68.10, the permit holder shall comply with the requirements of the Accidental Release Prevention Provisions in 40 CFR 68. The permit holder shall submit to the appropriate agency, either a compliance schedule for meeting the requirements of 40 CFR 68 by the date provided in 40 CFR, §68.10(a), or as part of the compliance certification submitted under §122.143(4) of this title (relating to General Terms and Conditions), a certification statement that the source is in compliance with all requirements of 40 CFR 68, including the registration and submission of a risk management plan. This general provision is enforceable only by the EPA.

(8) The permit holder for a site subject to Title VI of the FCAA shall meet the following requirements for protection of stratospheric ozone which are enforceable only by the EPA.

(A) Operation, servicing, maintenance, and repair on refrigeration and non-motor vehicle air conditioning appliances using ozone-depleting refrigerants on-site shall be conducted in accordance with 40 CFR 82, Subpart F. The permit holder shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart F.

(B) Servicing, maintenance, and repair of fleet vehicle air conditioning using ozone-depleting refrigerants shall be conducted in accordance with 40 CFR 82, Subpart B. The permit holder shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart B.

(c) General terms and conditions.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA.

(2) The authorization to operate under this general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (relating to Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of this general operating permit;

(B) access and copy any records that must be kept under the conditions of this general operating permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under this general operating permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with this general operating permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in this general operating permit and any provisional terms and conditions required to be included with this general operating permit. Any noncompliance with either the permit terms and conditions or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and may be grounds for enforcement action. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of this general operating permit.

(5) The permit holder need not comply with terms and conditions codified in this general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate under this general operating permit. In every case, the applicable requirements and state-only requirements are always enforceable.

(6) If the permit holder fails to comply with any provisional terms and conditions, the original terms and conditions of this general operating permit shall be enforceable. In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The executive director may request any information necessary to determine compliance with this general operating permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director.

(8) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(9) This general operating permit does not convey any property rights of any sort, or any exclusive privilege.

(10) A copy of this general operating permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(11) Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(12) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

(d) Recordkeeping terms and conditions.

(1) The permit holder shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. If an applicable requirement or state-only requirement specifies a longer data retention period, the records shall be maintained for at least the period of time specified in the applicable requirement or state-only requirement. The monitoring records shall include, but are not limited to, the following:

(A) the date, place as defined in this general operating permit, and time of sampling or measurements;

(B) the date(s) analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used;

(E) the results of such analyses;

(F) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement;

(G) the data from all calibration and maintenance records;

(H) all strip-chart recordings for continuous monitoring instrumentation; and

(I) copies of all reports required by this general operating permit.

(2) Records may be stored electronically.

(3) All records required to be maintained by this chapter shall be maintained at the location specified in the authorization to operate under this general operating permit.

(4) Records required by this general operating permit, including confidential information, shall be provided, upon request, in a legible form, to representatives from the commission or the local air pollution control program having jurisdiction within a reasonable period of time.

(5) The EPA may require that the records be sent directly to the EPA along with any claim of confidentiality. Any confidentiality claim should be made in accordance with federal law, including 40 CFR 2.

(6) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

(e) Reporting terms and conditions.

(1) Monitoring reports.

(A) Reports of monitoring data required to be submitted by an applicable requirement shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six-month period following the initial granting of the authorization to operate under this general operating permit or at the frequency required by an applicable requirement which requires more frequent reporting.

(C) The monitoring reports shall be submitted no later than 30 days after the end of each reporting period.

(D) The reporting of monitoring data does not change the data collection requirements specified in an applicable requirement.

(2) Deviation reports.

(A) The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed by the general operating permit application.

(B) A deviation report shall be submitted for at least each six-month period following the initial granting of the authorization to operate under this general operating permit or at the frequency required by an applicable requirement which requires more frequent reporting. However, no report is required if no deviations occurred over the six-month reporting period.

(C) The deviation reports shall be submitted no later than 30 days after the end of each reporting period.

(D) If a deviation is reported, in writing, under paragraph (3) of this subsection, the deviation report need only include a reference to the unauthorized emissions, upset or maintenance, and start-up and shutdown report containing details related to the deviation.

(3) Unauthorized emissions, upset or maintenance, and start-up and shutdown reports.

(A) Reports of deviations resulting from any unauthorized emissions, upset or maintenance, and start-up and shutdown shall be submitted in accordance with §§101.6, 101.7, and 101.11 of this title (relating to Upset Reporting and Recordkeeping Requirements; Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Exemptions from Rules and Regulations).

(B) Nothing in this paragraph shall relieve the permit holder from submitting any deviation report in accordance with the requirements of paragraph (2) of this subsection.

(f) Compliance certification terms and conditions.

(1) The permit holder shall certify compliance with the terms and conditions of this general operating permit for at least each 12-month period following the initial granting of authority to operate under this general operating permit.

(2) The certification shall be submitted no later than 30 days after the end of the certification period.

(3) The executive director shall make a copy of the compliance certification accessible to the EPA.

(4) The certification shall be based on at a minimum, the monitoring method (or recordkeeping method, if appropriate) required by this general operating permit to be used to assess compliance.

(5) The annual compliance certification shall include or reference the following information:

(A) the identification of each term, or condition, of this general operating permit for which the permit holder is certifying compliance and the method used for determining the compliance status of each emission unit;

(B) for emission units addressed by the general operating permit application for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; and

(C) for any emission unit addressed by the general operating permit application for which one or more deviations occurred over the certification period, the following information indicating the potentially intermittent compliance status of the emission unit:

(i) the identification of the emission unit;

(ii) the applicable requirement for which a deviation occurred;

(iii) the monitoring method (or recordkeeping method, if appropriate) used to assess compliance;

(iv) the frequency with which sampling, monitoring, or recordkeeping was required to be conducted by the monitoring or recordkeeping requirement of this general operating permit; and

(v) the total number of times that the assessment required by the monitoring or recordkeeping method specified in this general operating permit indicated that a deviation had occurred;

(D) the identification of all other terms and conditions of this general operating permit for which compliance was not achieved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714786
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: March 25, 1998
For further information, please call: (512) 239–1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XX. Edwards Aquifer Authority

Chapter 701. Filing and Processing of Permit Applications

The Edwards Aquifer Authority (EAA) proposes the repeal of §§701.1-701.5, 701.11-701.13, 701.15-701.19, 701.21, 701.22, 701.31-701.35, 701.52-701.59, 701.71-701.77, 701.91-701.102, 701.121-701.131, 701.141-701.147, 701.171-701.176, 701.191-701.196, and 701.211-701.221, concerning the filing and processing of groundwater withdrawal and well construction permits.

These existing rules were initially developed to provide the basic procedures for the administration of the initial regular permit program of the EAA. Subsequent rulemaking provided basic rules for term, emergency, and well construction permits.

Earlier in the year a project was commenced by the EAA at the direction of the board of directors of the EAA to develop a comprehensive, integrated groundwater withdrawal permit program, in addition to a fully scoped rulemaking index, in order for the rulemaking activities of the EAA to proceed in a more coordinated fashion. Among other things, this project has as a primary purpose, the more complete implementation of the Edwards Aquifer Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2353, as amended), the reorganization, clarification, and augmentation of the scope of issues addressed by the existing permit rules. Repeal of the existing rules will allow for the simultaneous adoption of new rules that meet these objectives.

Gregory M. Ellis, general manager, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government.

Mr. Ellis also has determined that for the first five years the repeals are in effect, the public benefit anticipated as a result of the repeals will be clearer, more organized, comprehensive, and specific substantive and procedural permit program and associated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Public meetings on the proposed repeals will be held at a later specified date. Notice of the public meetings will be published in a later issue of the *Texas Register*. The meetings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when call upon in order of registration. Open discussion within the audience will not occur during the meeting; however, the general manager or other EAA staff member will be available before and after the meetings to discuss the proposal and to answer questions.

Written comments on the proposed repeals not presented at a public meeting may be submitted within 30 days after publication in the *Texas Register* to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P.O. Box 15830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030, or by facsimile (210) 222-9748.

Subchapter A. General Provisions

31 TAC §§701.1–701.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19,

§1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.1. Definitions.

§701.2. Purpose.

§701.3. Types of Permits.

§701.4. Form.

§701.5. Filing Fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714936
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter B. Declarations of Historical Use

31 TAC §§701.11–701.13, 701.15–701.19, 701.21, 701.22

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules. The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.11. Declarations of Historical Use.

§701.12. Declaration Is an Application.

§701.13. Historical Period.

§701.15. Exempt Wells.

§701.16. Applicant.

§701.17. Joint Application.

§701.18. Application for Another.

§701.19. Time for Filing.

§701.21. Information Required in Application.

§701.22. Declarations Received Prior to Effective Date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714937
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter C. Filing and Notices

31 TAC §§701.31–701.35

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.31. Additional Definitions.

§701.32. Docket Clerk.

§701.33. Docket System.

§701.34. Notices and Other Communications.

§701.35. Number of Copies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714938
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter D. Administrative Review of Declarations of Historical Use

31 TAC §§701.52–701.59

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.52. Effect of Failing To Timely File Declaration.

§701.53. Interim Authorization.

§701.54. Separate Declarations.

§701.55. Receipt and Filing of Application.

§701.56. Notice of Non-Payment of Fee.

§701.57. Administrative Review.

§701.58. Application Complete.

§701.59. Application Incomplete.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714939
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter E. Technical Review and Initial Determination of Declarations of Historical Use

31 TAC §§701.71–701.77

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.71. Applicability.

§701.72. Supplementation of Application.

§701.73. Request for Additional Information.

§701.74. Technical Review.

§701.75. Summary of Initial Determination Permits.

§701.76. Notice of Initial Determination Permits.

§701.77. Uncontested Applications Submitted to Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
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Subchapter F. Initial Regular Permit Amounts and Terms

31 TAC §§701.91–701.102

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.91. Applicability.

§701.92. Determination of Amount of Water Available for Permitting.

§701.93. Maximum Historical Use.

§701.94. Criteria for Technical Review.

§701.95. Convincing Evidence.

§701.96. Use for Part of a Year.

§701.97. Credit for Participation in Federal Program.

§701.98. Permit Withdrawal Floor.

§701.99. Establishing Irrigation Floor.

§701.100. Establishing Historical Average Floor.

§701.101. Calculation of Initial Determination Permit Withdrawal Amounts.

§701.102. General and Special Permit Terms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter G. Hearings Process

31 TAC §§701.121–701.131

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.121. Filing Protests.

§701.122. Board Review of Protests.

§701.123. Hearing Before the State Office of Administrative Hearings.

§701.124. Evidence at Contested Case Hearing.

§701.125. Notice of Hearing.

§701.126. Preliminary Hearing.

§701.127. Procedure at Protest Hearing.

§701.128. Conduct and Decorum.

§701.129. Ex Parte Communications.

§701.130. Burden of Proof.

§701.131. Transcriptions of Hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter H. Post Hearing Process

31 TAC §§701.141–701.147

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed repeals: §701.1 - §§1.03, 1.08, 1.11, 1.15-1.20; §701.2 - §1.11; §701.3 - §§1.16, 1.18-1.20; §701.4 - §1.11; §701.5 - §1.29; §701.11 - §1.17; §701.12 - §§1.15-1.17; §701.13 - §1.16; §701.15 - §1.16, §1.33; §701.16 - §1.03, §1.16; §701.17, §701.18 - §1.11; §701.19 - §§1.11, 1.16, 1.17; §701.21 - §1.11, §1.16; §701.22 - §1.11, §1.17; §701.31 - §§1.11, 1.15-1.20; §§701.32-701.35 - §1.11; §701.52 - §1.16, §1.17; §701.53 - §1.17; §701.54 - §1.11, §1.17; §§701.55-701.59, 701.71-701.77 - §1.11; §701.91 - §1.16; §701.92 - §1.14, §1.16; §701.93 - §1.16; §701.94, §701.95 - §1.11, §1.16; §§701.96-701.100 - §1.16; §701.101 - §1.14, §1.16; §701.102 - §§1.11, 1.16, 1.29, 1.31-1.34; §701.121, §701.122 - §1.11; §701.123 - §1.08, §1.11; §§701.124-701.129 - §1.11; §701.130 - §1.11, §1.16; §§701.131, 701.141-701.147 - §1.11; §701.171 - §§1.11, 1.15, 1.19; §701.172 - §1.19, §1.34; §§701.173-701.176 - §1.11, §1.19; §701.191 - §§1.11, 1.15, 1.20; §701.192 - §1.20, §1.34; §701.193 - §1.11, §1.20; §701.194 - §1.20; §701.195, §701.196 - §1.11, §1.20; §701.211 - §1.11, §1.15; §701.212 - §1.11, §1.33; §701.213 - §1.11, §1.15; §701.214 - §§1.11, 1.15, 1.34; §701.215 - §1.11, §1.15; §701.216 - §1.15, §1.34; §§701.217-701.221 - §1.11, §1.15.

§701.141. Proposal for Decision.

§701.142. Exceptions.

§701.143. Board Meeting and Decision Schedule.

§701.144. Filing of Motion for Rehearing.

§701.145. Decision on Motion for Rehearing.

§701.146. Decision Final and Appealable.

§701.147. Appeal of Final Decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter I. Term Permits

31 TAC §§701.171–701.176

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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§701.171. Permit Required for Term Use.

§701.172. Conditions for Term Permits.

§701.173. Information Required in an Application for a Term Permit.

§701.174. Technical Review for a Term Permit.

§701.175. Required Elements of a Term Permit.

§701.176. Issuance of a Term Permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter J. Emergency Permits

31 TAC §§701.191–701.196

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

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§701.191. Permit Required for Emergency Use.

§701.192. Conditions for Emergency Permits.

§701.193. Information Required in Application for Emergency Permit.

§701.194. Public Emergency Permit Exemption.

§701.195. Emergency Authorization.

§701.196. Renewing an Emergency Permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter K. Well Construction Permits

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Edwards Aquifer Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

31 TAC §§701.211–701.221

The repeals are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

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§701.211. Permit Required for Well Construction.

§701.212. Registration of New Wells.

§701.213. Issuance of a Well Construction Permit.

§701.214. Proof of Authorization.

§701.215. Extensions to a Permit.

§701.216. Exempt Construction.

§701.217. Information Required in an Application for a Well Construction Permit.

§701.218. Technical Review for a Well Construction Permit.

§701.219. Required Elements of a Well Construction Permit.

§701.220. Time of Issuance of Well Construction Permit.

§701.221. Completion of Well Construction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 701. Purpose of Rules; General Provisions

31 TAC §§701.1, 701.3, 701.5

The Edwards Aquifer Authority (EAA) proposes new §§701.1, 701.3, and 701.5, concerning purpose of rules; general provisions. The new rules are being proposed as a result of Senate Bill 1477 (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2353), which requires the EAA to develop a groundwater withdrawal permitting program. The current permit program rules of the EAA (Chapter 701 of this title) are: not comprehensive; not structured to accommodate future rulemaking; and contain positions that don't represent the views of the board of directors or general manager of the EAA, or after additional legal view contain legal positions that are inconsistent with the view of the current general counsel.

The board of directors of the EAA and its permit committee directed general counsel to reevaluate the rules, develop an organized rulemaking framework and index in anticipation of future rulemaking, reogranize the current rules as necessary, develop a comprehensive, intergrated permit program, and address issues that are not addressed by the current rules.

Gregory M. Ellis, general manager, Edwards Aquifer Authority, has determined that except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local governments.

Mr. Ellis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be certainty with regard to the amount of underground water from the Edwards Aquifer a permit holder can withdraw. The public will also benefit from the preservation of spring flows and the consequent preservation of endangered species, and once the amount of water authorized in a permit for a public entity such as a municipality is known, that information will serve as a planning tool for developing and conserving water supplies in the future. These rules will not have an adverse economic impact on small businesses. Except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, there is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public meetings on the proposed new sections will be held at a later specified date. Notice of the public meetings will be published in a later issue of the *Texas Register*. The meetings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when call upon in order of registration. Open discussion within the audience will not occur during the meeting; however, the general manager or other EAA staff member will be available before and after the meetings to discuss the proposal and to answer questions.

Written comments on the proposed new sections not presented at a public meeting may be submitted within 30 days after publication in the *Texas Register* to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P.O. Box 15830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030, or by facsimile (210) 222-9748.

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following section of Senate Bill 1477 is affected by the proposed new sections: §1.11.

§701.1. Purpose of Rules.

The purpose of the Authority rules is to implement the Authority's powers and duties under the Edwards Aquifer Act (Act) and other laws, to establish the Authority's general policies and to set forth the procedures to be followed in Authority proceedings. The rules should be interpreted to be consistent with the Act, simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of state and other laws by the Authority.

§701.3. Construction of Rules.

Unless otherwise expressly provided for in these rules, the past, present, and future tense shall each include the other; the masculine, feminine and neutral gender shall each include the other; and the singular and plural number shall each include the other.

§701.5. Business Office and Mailing Address of the Authority.

(a) Business offices. The Authority's offices are located at 1615 North St. Mary's Street, San Antonio, Texas 78215.

(b) Mailing address. The mailing address is: Edwards Aquifer Authority, P.O. Box 15830, San Antonio, Texas 78212.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714947
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Chapter 703. Definitions

31 TAC §703.1

The Edwards Aquifer Authority (EAA) proposes new §703.1, concerning definitions. The new rule is being proposed as a result of Senate Bill 1477 (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2353), which requires the EAA to develop a groundwater withdrawal permitting program. The current permit program rules of the EAA (Chapter 701 of this title) are: not comprehensive; not structured to accommodate future rulemaking; and contain positions that don't represent the views of the board of directors or general manager of the EAA, or after additional legal view contain legal positions that are inconsistent with the view of the current general counsel.

The board of directors of the EAA and its permit committee directed general counsel to reevaluate the rules, develop an organized rulemaking framework and index in anticipation of future rulemaking, reogranize the current rules as necessary, develop a comprehensive, intergrated permit program, and address issues that are not addressed by the current rules.

Gregory M. Ellis, general manager, Edwards Aquifer Authority, has determined that except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments.

Mr. Ellis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be certainty with regard to the amount of underground water from the Edwards Aquifer a permit holder can withdraw. The public will also benefit from the preservation of spring flows and the consequent preservation of endangered species, and once the amount of water authorized in a permit for a public entity such as a municipality is known, that information will serve as a planning tool for developing and conserving water supplies in the future. These rules will not have an adverse economic impact on small businesses. Except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, there is no anticipated economic cost to persons who are required to comply with the section as proposed.

Public meetings on the proposed new section will be held at a later specified date. Notice of the public meetings will be published in a later issue of the *Texas Register*. The meetings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when call upon in order of registration. Open discussion within the audience will not occur during the meeting; however, the general manager or other EAA staff member will be available before and after the meetings to discuss the proposal and to answer questions.

Written comments on the proposed new section not presented at a public meeting may be submitted within 30 days after publication in the *Texas Register* to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P.O. Box 15830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030, or by facsimile (210) 222-9748.

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new section: §§1.03, 1.08, 1.11, 1.14-1.20, 1.29, 1.33, and 1.34.

§703.1. Definitions.

The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise:

Act–The Edwards Aquifer Act, Act of May 30, 1993, 73rd Legislature Regular Session, Chapter 626, 1993 Texas General Laws 2353, as amended.

Additional regular permit–A groundwater withdrawal permit issued by the Authority pursuant to the Act, §1.18(a).

Affected county–A county as defined in the Local Government Code, §232.021(1) that:

(A) has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which statistics are available; and

(B) any part of which is within 50 miles of an international border. Uvalde County is the only affected county within the Authority boundaries on the effective date of these rules.

Agricultural use–Irrigation use as defined by the Act, §1.03(12) including the beneficial use of groundwater for the production of food or fiber; the raising and feeding of livestock; and aquaculture.

APA–The Administrative Procedures Act, Chapter 2001, Government Code.

Application–A form document required by the Authority to initiate the process of obtaining the issuance of a permit, registration, exemption, license or other Authority approval. A declaration of historical use or declaration is an application for an initial regular permit.

Applicant–A person who files an application with the Authority.

Aquifer–The Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestone in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

Authority–The Edwards Aquifer Authority.

Authority offices–The Authority's principal offices identified in §701.5 of this title (relating to Business Office and Mailing Address of the Authority).

Beneficial use–The use of the amount of water that is economically necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to that purpose. The beneficial use of groundwater by a contract user inures to the benefit of the well owner. Use of water for irrigating of multiple or successive crops is a beneficial use to the extent it does not constitute waste.

Board–The Authority board of directors.

Cap–The total amount of groundwater withdrawals that may be legally authorized by the Authority through the issuance of regular permits. Unless adjusted pursuant to §1.14(d) of the Act, this amount may not exceed: 450,000 acre-feet per calendar year for the period from June 28, 1996, through December 31, 2007; and 400,000 acre-feet per calendar year for the period beginning January 1, 2008, and continuing thereafter.

Conservation–Any measure that would sustain or enhance the quantity of groundwater supply from the aquifer.

Contested case hearing–A proceeding governed by the APA, in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

Contract user–A person who, during the historical period, withdrew or purchased groundwater from the aquifer and placed the groundwater to beneficial use pursuant to a legal right obtained from a prior user or an existing user. Groundwater use by a contract user inures to the benefit of the prior user or existing user and may be claimed by an existing user in support of his declaration.

Declarant–An existing user who files a declaration of historical use.

Declaration of historical use or declaration–The document required to be filed pursuant to §1.16(a) of the Act and §707.83 of this title (relating to Requirement to File Declaration) and §707.85 of this title (relating to Time and Place for filing) and is deemed to be an application for an initial regular permit.

Demonstrated need–The amount of groundwater from the aquifer necessary to serve a transferee's current and reasonably expected future demands. A transferee's maximum use during the historic period is presumed to be his demonstrated need.

Docket clerk–The Authority's docket clerk designated by the general manager.

Domestic or livestock use–Use of water for:

(A) drinking, washing, or culinary purposes;

(B) irrigation of a family garden or orchard of which the produce is for household consumption only; or

(C) watering of animals.

Emergency permit–A groundwater withdrawal permit issued by the Authority pursuant to §1.20(a) of the Act.

Exempt well–A well that produces 25,000 gallons of water a day or less for domestic or livestock use, or livestock watering, that is not within, or serving, a subdivision requiring platting. The withdrawal and beneficial use of less than 1,250 gallons of water a day from an otherwise exempt well for purposes other than domestic or livestock use, or livestock watering, does not void a well's exempt status.

Existing well–An operating well drilled before June 1, 1993.

Existing user–Either:

(A) A person who, on June 1, 1993, owned a well from which groundwater from the aquifer has been withdrawn and placed to beneficial use during the historical period; or

(B) The successor in interest of a person owning a well described in subparagraph (A) of this definition.

Extraterritorial jurisdiction of a municipality–A municipality's extraterritorial jurisdiction as determined under the Local Government Code, Chapter 42, except that for a municipality that has a population of 5,000 or more and is located in a county bordering the Rio Grande River, it means the area outside the municipal limits but within five miles of those limits.

EUWD–The Edwards Underground Water District, the Authority's predecessor agency.

General manager–The Authority's executive director and chief administrator hired by the board.

Groundwater–Water percolating below the surface of the earth.

Groundwater right–A right acquired under State of Texas law to withdraw and place to beneficial use groundwater from the aquifer.

Historical period–The period from June 1, 1972, through May 31, 1993.

Historical use–The withdrawing and placing to beneficial use of groundwater from the aquifer during the historical period. For a prior user or an existing user whose historic use has been affected by a requirement of, or participation in, a federal program, the Authority shall give credit for the amount that would have been withdrawn and beneficially used during the historical period by such prior user or existing user but for the operation of the federal program. If the use was for irrigation purposes, the credit shall be based upon irrigation use on comparable acres in a similarly situated farm unit that is not in the federal program. If the use was for non-irrigation purposes, the credit shall be based upon the use of a comparable and similarly situated user whose uses were not affected by participation in a federal program.

Industrial use–The use of water for, or in connection with, commercial or industrial activities, including manufacturing; bottling; brewing; food processing; scientific research and technology; recycling; production of concrete, asphalt, and cement; commercial uses of water for tourism, entertainment, and hotel or motel lodging; generation of power other than hydroelectric; and other business activities.

Initial regular permit–A groundwater withdrawal permit issued by the Authority pursuant to §1.16(d) of the Act. Initial regular permit minimum withdrawal amount:

(A) for an existing user with irrigation use who files a declaration, not less than two acre-feet a year for each acre of land that the user, his contract user, prior user, or former existing user

(i) actually irrigated in any one calendar year during the historical period;

(ii) owned or leased or otherwise had a legal right to irrigate during the historical period; and

(iii) owned a well equipped and capable of irrigating the land;

(B) for an existing user who has operated a well for more than ten years during the historical period, and files a declaration, the average amount of groundwater withdrawn annually during the historical period calculated as follows: total adjusted aggregate withdrawals divided by the adjusted number of years in which the well was operated during the historical period. For the purposes of this subparagraph:

(i) the total adjusted aggregate withdrawals equals the total aggregate withdrawals less, if the existing user so elects, an amount equal to the amount of withdrawals for any period of consecutive years during the historical period equal to 50% of the years more than ten that the well was operated during the historical period; and

(ii) the adjusted number of years in which the well was operated during the historical period equals the number of years for which withdrawals are included in the calculation of the total adjusted aggregate withdrawals;

(C) for an existing user who has operated a well for three or more years but not exceeding ten years during the historical period and files a declaration, the average amount of groundwater withdrawn annually during the historical period calculated as follows: total aggregate withdrawals divided by the number of years in which the well was operated during the historical period; or

(D) for an existing user who has operated a well for less than three years during the historical period, and files a declaration,

the average amount of groundwater withdrawn annually during the historical period calculated as follows: total aggregated withdrawals divided by three.

Interruptible–When referring to a groundwater withdrawal permit, the complete cessation or temporary curtailment of the right to withdraw groundwater from the aquifer based upon the measurement of a water level at an index well, or as otherwise determined by the board.

Irrigation use–The use of water for the irrigation of pastures and commercial crops, including orchards.

Judge–A SOAH administrative law judge.

Livestock–Animals, beasts or poultry collected or raised for pleasure, recreational use, or commercial use.

Municipal use–The water use within or outside of a municipality and its environs whether supplied by a person, privately owned utility, political subdivision or other entity for certain purposes specified:

(A) the use of water for domestic use, the watering of lawns and family gardens; fighting fires; sprinkling streets; flushing sewers and drains; water parks and parkways; and recreation, including public and private swimming pools; or

(B) the use of water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands.

(C) the application of treated effluent on land under a permit issued under Chapter 26, Water Code, if:

(i) the primary purpose of the application is the treatment or necessary disposal of the effluent;

(ii) the application site is a park, parkway, golf course, or other landscaped area within the authority's boundaries; or

(iii) the effluent applied to the site is generated within an area for which the TNRCC has adopted a rule that prohibits the discharge of the effluent.

New well–A well drilled on or after June 1, 1993.

Non-deteriorated well–A well, the condition of which, will not cause or is not likely to cause waste.

Operate a well or operating well-A well that is in use. A well is in use, regardless of whether withdrawals are made from the aquifer in a calendar year, if:

(A) it is a non-deteriorated well containing the casing, pump and pump column in good operating condition; or

(B) it is a non-deteriorated well and is capped.

Order–Any written directive of the board carrying out the powers and duties of the Authority.

Party–Each person admitted as a party in a contested case hearing.

Permit–The written document setting forth the legal authorization issued by the Authority to an applicant to withdraw groundwater from the aquifer, to construct a well, or engage in another activity within the Authority's jurisdiction for which the Authority's approval is required.

Permittee–A person to whom the Authority has issued a permit.

Person–An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, partnership, association or any other legal entity.

Pleadings–Any document filed by parties in a contested case hearing, such as applications, protests, complaints, claims, petitions, preliminary reports, answers, motions and other similar documents.

Pollution–The alteration or contamination of the physical, thermal, chemical, or biological quality of groundwater in the aquifer, or any other water in the state, that renders the water harmful, detrimental or injurious to humans, animal life, vegetation, property, or public health, safety, or welfare or that impairs the usefulness of the public enjoyment of the water for any lawful or reasonable purpose.

Prior user–A person who owned a well during the historical period and who, during his ownership, withdrew aquifer water from the well and placed it to beneficial use during the historical period, but during the historical period had conveyed his ownership interest in the well to another person.

Produces 25,000 gallons of water a day or less–An operating well constructed or equipped so as to be incapable of producing groundwater from the aquifer at a rate in excess of 25,000 gallons per day.

Protestant–Any party opposing, in whole or in part, an application.

Recharge–Increasing the supply of water to the aquifer by naturally occurring channels or artificial means.

Registrant–A person who files a registration with the Authority.

Registration–The document required to be filed pursuant to §1.33(b) of the Act or §707.203 of this title (relating to Requirement to Register).

Registry–The records management system maintained by the Authority for groundwater withdrawal permits, registrations, well constructions permits, transfer agreements, and other documents as determined by the general manager.

Reuse–Authorized use for one or more beneficial purposes of water that remains unconsumed after the water is used for the original purpose and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

Sell or sale–When referring to an interim authorization status or a regular permit, means the permanent transfer of all or a part of a regular permit that is attributable to groundwater conserved through the installation of water conservation equipment.

SOAH–The State Office of Administrative Hearings.

Subdivision requiring platting–The division of a tract of land into parts, whether it is made using a metes and bounds description in a deed of conveyance or in a contract for deed, by using a contract of sale or other executory contract to convey, or by using any other method, and:

(A) for land located within the corporate limits of a municipality or in the extraterritorial jurisdiction of a municipality, the tract is divided into two or more parts to lay out a subdivision, including an addition to a municipality, to lay out suburbs, buildings or other lots, or to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks or other parts. A division of land under this subparagraph does not include a division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated;

(B) for land located outside the corporate limits of a municipality, and outside the extraterritorial jurisdiction of a municipality, and in other than an affected county, the tract is divided

into two or more parts to lay out a subdivision, including an addition to a municipality, to lay out suburbs, building or other lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks or other parts. A division of land under this subsection does not include a division into parts greater than five acres, where each part has access and no public improvement is being dedicated; or

(C) for land located outside the corporate limits of municipalities, and outside the extraterritorial jurisdiction of a municipality, and in an affected county, the tract is divided into four or more tracts that are intended primarily for residential use, and the subdivision of the tract is not incident to the conveyance of the land as a gift. A lot is rebuttably presumed to be intended for residential use if the lot is five acres or less.

Term permit–A groundwater withdrawal permit issued by the Authority pursuant to the Act, §1.19(a).

TNRCC–The Texas Natural Resource Conservation Commission.

Transfer–The sale of groundwater, wholesale or retail, from the aquifer withdrawn pursuant to interim authorization status or a regular permit without a conveyance described in subparagraph (A) or (B) is this definition is not a transfer. The conveyance by deed, lease, or otherwise, of title to or other interest in:

(A) all or part of an interim authorization status or a regular permit;

(B) the irrigable lands constituting the place of use for irrigation use; or

(C) a well or other work that withdraws water from the aquifer.

Transfer agreement–The written transaction documents, even if subject to contingencies, providing for a current or future transfer.

Transfer period–The time period over which a transfer is made pursuant to a transfer agreement.

Transferee–The person acquiring the title or other interest being transferred.

Transferor–The person conveying the title or other interest being transferred.

Underground water–The meaning of "groundwater" as defined by Water Code, §36.001(5) and this section.

U.S.G.S.–The United States Geological Survey.

Waste –

(A) Withdrawal of groundwater from the aquifer at a rate and amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic or stock-raising purposes;

(B) The flowing or producing of wells from the aquifer if the water produced is not used for a beneficial purpose;

(C) Escape of groundwater from the aquifer to any other reservoir that does not contain groundwater;

(D) Pollution or harmful alteration of groundwater in the aquifer by salt water or other deleterious matter admitted from another stratum or from the surface of the ground;

(E) Willfully or negligently causing, suffering or permitting groundwater from the aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the TNRCC under Chapter 26, Water Code;

(F) Groundwater pumped from the aquifer for irrigation that escapes as irrigation tailwater onto land, other than that of the well owner, unless permission has been granted by the occupant of the land receiving the discharge;

(G) For water produced from an artesian well, "waste" has the meaning assigned by the Water Code, §11.205; or

(H) Withdrawal of water that is substantially in excess of the volume or rate reasonably required for a particular use constitutes waste. Irrigation use of two acre-feet of water per irrigated acre is rebuttably presumed not to constitute waste.

Well–A bored, drilled, or driven shaft, or an artificial opening, in the ground for the purpose of making withdrawals from the aquifer made by digging, jetting, or some other method, where the depth of the shaft or opening is greater than its largest surface dimension, but does not include a surface pit, surface excavation, or natural depression.

Well construction permit–A permit issued by the Authority pursuant to §1.15(b) of the Act for the construction or modification of wells or other works designed for the withdrawal of water from the aquifer.

Well J-17–State well number AY-68-37-203 located in Bexar County.

Well J-27–State well number YP-69-50-302 located in Uvalde County.

Well serving a subdivision requiring platting–A well located within the Authority's boundaries, regardless of whether the well is located inside or outside the boundaries of a subdivision requiring platting, that provides or is to provide, piped water for any use to two or more service connections located within a subdivision requiring platting. A well owned by one person, or jointly by a husband and wife, that provides or is to provide, piped water for domestic or livestock use to 10 or fewer service connections, and a person who is the owner of each service connection is either the well owner, a person related to the owner, a member of the owner's household within the second degree of consanguinity or an employee of the owner, is not a well serving a subdivision requiring platting.

Well within a subdivision requiring platting–A well within the boundaries evidenced on a recorded plat of a subdivision requiring platting. A well that otherwise meets the criteria to be an exempt well is not a well within a subdivision requiring platting if the well owner has a registered on-site sewage treatment facility and the well meets the following criteria listed in subparagraphs (A)-(B) of this definition:

(A) the well was in existence prior to June 28, 1996; or

(B) the well is located within a subdivision required to be platted if the subdivision meets the following criteria listed in clauses (i)-(iii) of this subparagraph:

(i) the subdivision existed before June 28, 1996;

(ii) there is no existing retail potable water service to the subdivision; and

(iii) as of January 1, 1998, more than 25% of the lots within the subdivision are owned by person other than the subdivider or the subdivision developer. Withdrawals from wells satisfying these criteria may not exceed one acre-foot of groundwater per calendar year for exempt purposes.

Withdrawal–An act, or a failure to act, that results in taking groundwater from the aquifer by or through man-made facilities, including pumping, withdrawing or diverting groundwater.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714948
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Chapter 705. Substantive Groundwater Withdrawal Permit Rules

The Edwards Aquifer Authority (EAA) proposes new §§705.1, 705.11, 705.13, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157, 705.159, 705.161, 705.171, 705.173, 705.221, 705.223, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265, and 705.267, concerning substantive groundwater withdrawal permit rules. The new rules are being proposed as a result of Senate Bill 1477 (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2353), which requires the EAA to develop a groundwater withdrawal permitting program. The current permit program rules of the EAA (Chapter 701 of this title) are: not comprehensive; not structured to accommodate future rulemaking; and contain positions that don't represent the views of the board of directors or general manager of the EAA, or after additional legal view contain legal positions that are inconsistent with the view of the current general counsel.

The board of directors of the EAA and its permit committee directed general counsel to reevaluate the rules, develop an organized rulemaking framework and index in anticipation of future rulemaking, reogranize the current rules as necessary, develop a comprehensive, intergrated permit program, and address issues that are not addressed by the current rules.

Gregory M. Ellis, general manager, Edwards Aquifer Authority, has determined that except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local governments.

Mr. Ellis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be certainty with regard to the amount of underground water from the Edwards Aquifer a permit holder can withdraw. The public will also benefit from the preservation of spring flows and the consequent preservation of endangered species, and once the amount of water authorized in a permit for a public entity such as a municipality is known, that information will serve as a planning tool for developing and conserving water supplies in the future. These rules will not have an adverse economic impact on small businesses. Except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, there is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public meetings on the proposed new sections will be held at a later specified date. Notice of the public meetings will be published in a later issue of the *Texas Register*. The meetings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when call upon in order of registration. Open discussion within the audience will not occur during the meeting; however, the general manager or other EAA staff member will be available before and after the meetings to discuss the proposal and to answer questions.

Written comments on the proposed new sections not presented at a public meeting may be submitted within 30 days after publication in the *Texas Register* to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P.O. Box 15830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030, or by facsimile (210) 222-9748.

Subchapter A. Purpose of Permit Program

31 TAC §705.1

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.1. Purpose.

The purpose of the permit program of the Authority is to:

(1) sustain the diverse economic and social interests dependent on the Edwards Aquifer;

(2) effectively control the aquifer to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries and the economic development of the state and region;

(3) provide for aquifer management through the application of management mechanisms consistent with law and appropriate to the aquifer system;

(4) manage, conserve, preserve and protect the aquifer;

(5) increase aquifer recharge;

(6) prevent water waste in the aquifer; and

(7) prevent water pollution in the aquifer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
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Subchapter B. Groundwater Withdrawals not Requiring a Permit; Exempt Wells

31 TAC §§705.11, 705.13, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.11. Withdrawals Not Requiring a Groundwater Withdrawal Permit.

Withdrawals of groundwater from the aquifer from the following wells do not require a groundwater withdrawal permit from the Authority:

(1) wells qualifying for interim authorization status under the Edwards Aquifer Act (Act), §1.17; or

(2) exempt wells pursuant to the Act, §1.16(c) and §1.33.

§705.13. Wells Not Requiring a Well Construction Permit.

A well construction permit is not required for the following wells listed in paragraphs (1) and (2) of this section:

(1) an exempt well; or

(2) any existing well that has been registered with the Authority and the proposed well construction does not alter the well capacity more than 15 %, as long as the proposed construction does not increase the capability of the well to produce groundwater from the aquifer at a rate in excess of 25,000 gallons per day.

§705.15. Provisions Not Applicable to Exempt Wells.

(a) Except as provided in subsection (b) of this section, the Edwards Aquifer Act (Act) and these rules apply to exempt wells.

(b) The following provisions do not apply to exempt wells:

(1) metering requirements of the Act, §1.33(a);

(2) the requirement to obtain a permit from the Authority pursuant to the Act, §1.15(b) of before withdrawing groundwater from the aquifer;

(3) the requirement to obtain a permit from the Authority pursuant to the Act, §1.15(b) of before beginning construction of a well or other works designed for the withdrawal of water from the aquifer;

(4) the requirement to file a declaration;

(5) the withdrawal limits set forth in the Act, §1.14(b) and (c);

(6) the requirement to file an annual water use report pursuant to the Act, §1.32;

(7) the payment of aquifer management fees or other fees imposed by the Authority.

§705.17. Withdrawal Conditions for Wells Not Requiring a Groundwater Withdrawal Permit.

The withdrawal of groundwater from a well that is not required to obtain a permit pursuant to §705.11 of this title (relating to Withdrawals Not Requiring a Groundwater Withdrawal Permit) are conditioned as follows and must:

(1) protect the water quality of the aquifer;

(2) protect the water quality of surface streams to which the aquifer provides springflow;

(3) achieve water conservation;

(4) maximize the beneficial use of water available for withdrawal from the aquifer;

(5) protect aquatic habitat;

(6) protect wildlife habitat;

(7) protect species that are designated as threatened or endangered under applicable federal or state law;

(8) prevent waste;

(9) provide for instream uses, bays and estuaries;

(10) comply with the Edwards Aquifer Act; and

(11) comply with all rules of the Authority applicable to withdrawals not requiring a groundwater withdrawal permit.

§705.19. Subsequent Creation of Subdivisions; Vacation or Cancellation of Subdivisions; Exempt Well Status.

(a) After the effective date of these rules, when a subdivision of land requiring platting is made and a pre-existing exempt well is included within the subdivision boundaries, the exempt well retains its exempt status for as long as it otherwise meets the requirements for an exempt well. This subsection does not apply to wells drilled in anticipation of the subdivision of land or for which no withdrawals have been made before the time the subdivision is platted.

(b) In the event of vacation or cancellation of a subdivision requiring platting, a permitted well that, but for its location within or serving a subdivision requiring platting, would otherwise be an exempt well, may be converted to an exempt well if the owner files a registration as an exempt well, and the general manager determines that the well qualifies as an exempt well. Within 30 days of the receipt of the registration by the Authority, an applicant will be notified in writing whether the registration is approved. This time may be extended by the Authority with written notice to the applicant.

§705.21. Loss of Exempt Well Status.

If, for any reason, a well previously determined to be an exempt well no longer qualifies for that status, the well owner shall notify the Authority in writing no later than 45 days after discovery of the facts causing the loss of status. If the Authority receives information from a person other than the well owner indicating that the well no longer qualifies as an exempt well, the Authority will notify the owner and provide an opportunity to demonstrate why the exempt well status should not be cancelled. The determination as to whether a well loses its exempt well status shall be made by the general manager. Within 30 days of the receipt of the notice from the well owner or information from another person, the well owner will be notified in writing whether or not the well loses its exempt well status. With written notice to the applicant, this time may be extended by the Authority.

§705.23. Conversion of a Well from Permitted to Exempt Well Status.

If the owner of a permitted well desires to convert the well to an exempt well, the owner shall file with the Authority a registration of the well as an exempt well for review and approval by the general manager.

§705.25. Dual Status Wells.

The owner of a permitted well may also make withdrawals from the well that would qualify for exempt well status if the withdrawals are made and beneficially used on site by the owner. Section 705.15(b) of this title (relating to Provisions not Applicable to Exempt Wells) applies to the exempt portion of the permitted well. The owner of a permitted well seeking dual status designation shall annually file a notice with the Authority on the annual water user's report required by §705.111 of this title (relating to Annual Water Use Reports).

§705.27. Exempt Wells Ineligible for Permitted or Interim Authorization Status.

The owner of an exempt well may not receive a groundwater withdrawal permit for that well from the Authority, nor may it qualify for interim authorization status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
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Subchapter C. Activities Requiring a Permit

31 TAC §705.41

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.41. Activities Requiring a Permit.

Except as provided in §705.11 and §705.13 of this title (relating to Withdrawals Not Requiring a Groundwater Withdrawal Permit and Wells Not Requiring a Well Construction Permit, respectively), the following activities listed in paragraphs (1)-(7) of this section are required to obtain a permit from the Authority before the commencement of the activity:

(1) withdraw groundwater from the aquifer;

(2) construct a well designed for the withdrawal of groundwater from the aquifer;

(3) construct other works designed for the withdrawal of groundwater from the aquifer;

(4) drill, equip or complete a well designed for the withdrawal of groundwater from the aquifer;

(5) substantially alter the size of a well designed for the withdrawal of groundwater from the aquifer;

(6) substantially alter the size of a well pump designed for the withdrawal of groundwater from the aquifer; or

(7) operate a well designed for the withdrawal of groundwater from the aquifer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter D. Authorized Uses

31 TAC §705.51

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.51. Authorized Uses.

A person may obtain a permit from the Authority to withdraw groundwater from the aquifer for any beneficial use, including but not limited to agricultural, domestic or livestock use; industrial use; irrigation use; livestock use; or municipal use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter E. Permit Categories

31 TAC §§705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73. 705.75, 705.77

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.61. Permit Categories.

The Authority may issue the following permits listed in paragraphs (1)-(5) of this section:

(1) initial regular permits;

(2) additional regular permits;

(3) term permits;

(4) emergency permits; and

(5) well construction permits.

§705.63. Contents of Groundwater Withdrawal Permits.

Groundwater withdrawal permits issued by the Authority shall contain the following:

(1) name, address and telephone number of the person to whom the permit is issued;

(2) permit category;

(3) permit term;

(4) purpose of use;

(5) maximum instantaneous rate of withdrawal;

(6) maximum volume of withdrawals by purpose that a permittee may withdraw in a calendar year;

(7) location of the points of withdrawal;

(8) maximum rate of withdrawal authorized each month in a calendar year;

(9) place of use;

(10) that the source of the groundwater is the aquifer;

(11) metering or measuring requirements;

(12) interruptibility conditions;

(13) renewability conditions, if applicable;

(14) notice to the permittee that the permit is subject to the limitations provided in the Edwards Aquifer Act and these rules;

(15) any appropriate conditions to the exercise of the right to withdraw groundwater pursuant to the permit as determined by the Authority; and

(16) any other information as required by the board.

§705.65. Contents of Well Construction Permits.

Well construction permits issued by the Authority shall contain the following:

(1) well owner's name, address and telephone number;

(2) legal description of the location of the well, including:

(A) county;

(B) section, block and survey;

(C) labor and league;

(D) number of feet to the two nearest non-parallel property lines (legal survey lines); and

(E) other adequate legal description, approved by the Authority;

(3) the volume of groundwater to be produced from the well;

(4) a condition prohibiting the well from being located in, or serving, a subdivision requiring platting;

(5) internal diameter, total well depth, depth of cement casing, size, and other well construction specifications as determined by the Authority;

(6) size of the pump, pumping rate and pumping method; and

(7) any conditions, or other information, as required by the general manager.

§705.67. Initial Regular Permits.

(a) Status of Groundwater Right. An initial regular permit is a groundwater right in the aquifer.

(b) Nature of Property Interest. An initial regular permit is a right to withdraw and place to beneficial use groundwater of the aquifer. The permit is a vested, real property interest, an incorporeal hereditament. If the purpose of use of the permit is for irrigation, then the permit is appurtenant to the land on which the groundwater is used. If the land subject to an initial regular permit for irrigation purposes is transferred, the permit is transferred with the land in accordance with the Edwards Aquifer Act(Act), §1.34 (relating to Transfer of Rights) and Subchapter I of this chapter (relating to Transfer of Permits).

(c) Interruptibility. An initial regular permit is interruptible. Withdrawals under initial regular permits may be interrupted only in the following circumstances listed in paragraphs (1)-(4) of this subsection:

(1) for those wells located in the San Antonio pool, if the level of the aquifer for the San Antonio pool is equal to or less than 650 feet above mean sea level as measured at well J-17;

(2) for those wells located in the Uvalde pool, if the level of the aquifer for the Uvalde pool is equal to or less than 845 feet above mean sea level as measured at well J-27;

(3) if the springflow protection program is implemented by order of the board pursuant to the Act, §1.14(h); or

(4) if the critical period management plan is implemented by order of the board pursuant to the Act, §1.26.

(d) Term. Subject to abandonment, cancellation or retirement, an initial regular permit is perpetual and has no term.

(e) Basis for Issuance. Subject to the duty of the board to determine the amount of groundwater that may be withdrawn under an initial regular permit, the board shall grant the application for an initial regular permit to an existing user who:

(1) timely files a declaration;

(2) timely pays the application fee; and

(3) establishes by convincing evidence beneficial use of groundwater from the aquifer during the historic period.

(f) Groundwater Available for Permitting. Groundwater is available for permitting for initial regular permits whenever the total outstanding groundwater withdrawals authorized by initial regular permits issued by the board is less than the cap.

(g) Effect of Issuance of Other Permits. Groundwater withdrawals made pursuant to term permits, emergency permits and withdrawals from wells not requiring a groundwater withdrawal permit pursuant to §705.11 of this title (relating to Withdrawals Not Requiring a Groundwater Withdrawal Permit) are not charged to the cap and do not operate to remove the amounts authorized therein from being available for permitting by applicants for initial regular permits.

(h) Proper Applicants. An existing user may apply for an initial regular permit.

(i) Groundwater Withdrawal Amounts. The board shall issue the following groundwater withdrawal amounts in initial regular permits as follows.

(1) To the extent groundwater is available for permitting, the board shall issue an existing user an initial regular permit authorizing the withdrawal of groundwater in an amount equal to the user's maximum beneficial use of groundwater without waste during any one calendar year of the historical period. If an existing user does not have historical use for a full calendar year, then the Authority shall issue an initial regular permit for withdrawal based on an amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year.

(2) To the extent groundwater is not available for permitting, the board shall issue an existing user an initial regular permit authorizing the withdrawal of groundwater in the amounts as determined pursuant to §705.77 (relating to Proportional Adjustment of Initial Regular Permits).

§705.69. Additional Regular Permits.

(a) Status as Groundwater Right. An additional regular permit is a groundwater right in the aquifer.

(b) Nature of Property Interest. An additional regular permit is a right to withdraw and place to beneficial use groundwater of the

aquifer. The permit is a vested real property interest, an incorporeal hereditament. If the purpose of use of the additional regular permit is for irrigation, then the permit is appurtenant to the land on which the groundwater is used. If the land subject to an additional regular permit for irrigation purposes is transferred, the permit is transferred with the land, in accordance with the Edwards Aquifer Act, §1.34 (relating to Transfer of Rights) and Subchapter H of this title (relating to Transfers).

(c) Interruptibility. An additional regular permit is interruptible as may be established by the board.

(d) Term. Subject to abandonment, cancellation or retirement, an additional regular permit is perpetual and has no term.

§705.71. Term Permits.

(a) Status of Groundwater Right. A term permit is a groundwater right in the aquifer.

(b) Nature of Property Interest. A term permit is a license to withdraw and place to beneficial use groundwater of the aquifer. During its term, the permit is vested, personal property interest. The permit expires and is cancelled after the expiration of its term. The permit is not appurtenant to the land on which the groundwater is used. If the land subject to term permit for irrigation purposes is transferred, the permit is not transferred with the land.

(c) Interruptibility. When the level of the aquifer is equal to or less than these index well levels, the right of a term permit holder to withdraw groundwater from the aquifer is interrupted, and the term permit holder must immediately cease all withdrawals until further notice from the Authority. The Authority will give a term permit holder written notice when the San Antonio or Uvalde pools are equal to or less than these index well levels, and when well withdrawals may be resumed because the index well measurements are higher than the interruption levels. A term permit is interruptible. Withdrawals under term permits may be interrupted only:

(1) for the San Antonio Pool, if the level of the aquifer is equal to or less than 665 feet above sea level, as measured at well J-17; or

(2) for the Uvalde pool, if the level of the aquifer is equal to or less than 865 feet above sea level, as measured at well J-27.

(d) Term. A term permit is for a term for any period the Authority considers feasible, but the Authority may not issue a term permit for a period of more than ten years.

(e) Renewability. A term permit is renewable pursuant to the rules of the Authority and the conditions of the permit.

(f) Basis for Issuance. Subject to the availability of groundwater for permitting from the San Antonio or Uvalde pools, as appropriate, the board may grant an application for a term permit if it finds:

(1) the application fee has been paid;

(2) groundwater is available for permitting from the San Antonio or Uvalde pools, as appropriate;

(3) granting the application would not violate the Edwards Aquifer Act;

(4) granting the application would not violate the rules of the Authority;

(5) the applicant is in compliance with other permits the applicant holds from the Authority;

(6) the proposed use of groundwater does not unreasonably negatively affect existing groundwater resources;

(7) the proposed use of groundwater is for a beneficial use;

(8) the proposed use of groundwater is consistent with the Authority's comprehensive management plan;

(9) the applicant will avoid waste and achieve water conservation;

(10) the proposed use of groundwater is economically feasible in relation to the proposed length of the term;

(11) if determined by the board to be applicable, the applicant has an approved existing on-site sewer system, or has been granted an application to construct by the appropriate regulatory agency; and

(12) the applicant has no other source of water from a provider of potable or non-potable water service, as may be appropriate, for the applied for use of water.

(g) Groundwater Available for Permitting. The Authority has not established a maximum quantity of water that may be withdrawn from the San Antonio or Uvalde pools. Until the Authority determines otherwise, groundwater is available for permitting.

(h) Proper Applicants. Any person may apply for a term permit.

§705.73. Emergency Permits.

(a) Status of Groundwater Right. An emergency permit is a groundwater right in the aquifer.

(b) Nature of Property Interest. An emergency permit is a license to withdraw and place to beneficial use groundwater of the aquifer. During its term, the permit is a vested, personal property interest. The permit expires and is cancelled after the expiration of its term. The permit is not appurtenant to the land on which the groundwater is used. If the land subject to an emergency permit for irrigation purposes is transferred, the permit is not transferred with the land.

(c) Interruptibility. An emergency permit is not interruptible.

(d) Term. An emergency permit is for a term not to exceed 30 days.

(e) Renewability. An emergency permit is renewable pursuant to the rules of the Authority and the conditions of the permit.

(f) Basis for Issuance. The general manager shall grant an application for an emergency permit if he finds:

(1) the application fee has been paid;

(2) groundwater from the aquifer will be placed to beneficial use;

(3) issuance of the permit is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety;

(4) the withdrawal amounts authorized in all other permits issued to the applicant by the Authority have been exhausted; and

(5) granting the application would not violate the Edwards Aquifer Act or the rules of the Authority.

(g) Groundwater Available for Permitting. The Authority has not established a maximum quantity of water that may be

withdrawn for emergency permits. Until the Authority determines otherwise, groundwater is available for permitting.

§705.75. Well Construction Permits.

(a) Status of Groundwater Right. A well construction permit is not evidence of a groundwater right in the aquifer.

(b) Nature of Property Interest. The right as evidenced by a well construction permit is a license to conduct the activities set forth in §705.41(2)-(7) of this title (relating to Activities Requiring a Permit). The permit is a vested, personal property interest.

(c) Term. A well construction permit is for a term not to exceed 90 days.

(d) Basis for Issuance. The general manager may grant an application for a well construction permit if he finds:

(1) the application fee has been paid;

(2) applicant intends to:

(A) construct a well designed for the withdrawal of groundwater from the aquifer;

(B) construct other works designed for the withdrawal of groundwater from the aquifer;

(C) drill, equip or complete a well designed for the withdrawal of groundwater from the aquifer;

(D) substantially alter the size of a well designed for the withdrawal of groundwater from the aquifer;

(E) substantially alter the size of a well pump designed for the withdrawal of groundwater from the aquifer; or

(F) operate a well designed for the withdrawal of groundwater from the aquifer;

(3) the withdrawals from the aquifer will be placed to a beneficial use;

(4) the general manager finds that there is a legal basis for withdrawals from the well;

(5) the capacities of the well or other work is necessary and appropriate for the amount of groundwater proposed to be withdrawn;

(6) granting the application would not violate the Edwards Aquifer Act;

(7) granting the application would not violate the rules of the Authority;

(8) the applicant is in compliance with other permits the applicant holds from the Authority;

(9) the proposed well construction and operation does not unreasonably negatively affect the aquifer or other rights to withdraw from the aquifer.

(10) the proposed well construction will not cause the applicant to exceed permitted withdrawal amounts; and

(11) the proposed well construction conforms to all State of Texas and Authority well construction standards.

§705.77. Proportional Adjustment of Initial Regular Permits.

(a) Requirement to Perform. If the total amount of groundwater determined to have been beneficially used without waste as reflected in the total amount of groundwater authorized to be withdrawn pursuant to initial regular permits issued by the board exceeds the cap, the board shall adjust the amount of groundwater authorized for withdrawal under initial regular permits.

(b) Purpose and Effect. The purpose of proportional adjustment is to adjust otherwise authorized groundwater withdrawal amounts under issued initial regular permits to be equal to the cap.

(c) Orders of the Board. The board shall make all proportional adjustments by order. Proportional adjustment orders may be issued provisionally before the board has issued final orders on all applications for initial regular permits, or as a final order after the final order on all remaining pending applications for initial regular permits.

(d) Proportional Adjustment Procedure.

(1) The Nature of Proportionality. An adjustment is proportional when it maintains a constant ratio in relation to the groundwater withdrawal amounts authorized in each final initial regular permit subject to proportional adjustment.

(2) Permits Subject to Proportional Adjustment. Subject to subsection (f) of this section, all holders of initial regular permits issued by the board are subject to proportional adjustment.

(3) Amount Subject to Proportional Adjustment. The amount that is subject to proportional adjustment is the total aggregate amount of groundwater withdrawals authorized in final initial regular permits issued by the board.

(4) Amount to Which Proportionally Adjusted Withdrawals are Adjusted. The cap is the groundwater withdrawal amount which is to be attained by the proportional adjustment process.

(5) Proportional Adjustment Calculation. The board will proportionately adjust the aggregate total amount of all groundwater withdrawals authorized in all final initial regular permits, by calculating the proportionately adjusted authorized withdrawal amount for each final initial regular permit (p), by using the following formula: multiply the authorized withdrawal amount in a final initial regular permit (h), by the quotient of the cap (P), divided by the aggregate total amount of all groundwater withdrawals authorized in all final initial regular permits (C): $h \times P/C = p$.

(6) Application of the Proportional Adjustment Calculation to Each Initial Regular Permit. The authorized withdrawal amounts in each final initial regular permit will be adjusted to p, or the applicable initial regular permit minimum withdrawal amount, if any, whichever is higher. An initial regular permit qualifying for an initial regular permit minimum withdrawal amount that has been proportionally adjusted to the permit withdrawal minimum shall not be subjected to further proportional adjustment. The board will then calculate the resulting aggregate of the adjusted aggregate total amount of all groundwater withdrawals authorized in all final initial regular permits (W). The board shall continue to apply the formula to each final initial regular permit that has not been reduced to its initial regular permit minimum withdrawal amount, if any, until W equals p, or until no further adjustments can be accomplished to equal p. The board shall then issue a provisional or final order proportionally adjusting each final initial regular permit to the amount calculated for p for each initial regular permit and for all groundwater withdrawals that have been proportionally adjusted, an order directing the disposition of the groundwater pursuant to subsection (g) of this section.

(e) Limits on Proportional Adjustment. The proportional adjustments to be performed pursuant to the Edwards Aquifer Act(Act), §1.16(e) of and subsection (d) of this section notwithstanding, the board shall not issue an initial regular permit authorizing groundwater withdrawals in an amount below the initial regular permit mini-

mum withdrawal amounts as defined in §703.1 of this title (relating to Definitions).

(f) Disposition of Proportional Adjusted Groundwater. In the event that the board proportionally adjusts withdrawal amounts authorized in an initial regular permit, then the board may take any action consistent with the Act and these rules to dispose of the groundwater proportionally adjusted.

(g) Actions in the Event that Proportionally Adjusted Withdrawal Amounts Authorized in Initial Regular Permits Exceed the Cap. Except as provided in subsection (e) of this section, in the event that proportionally adjusted withdrawal amounts authorized in initial regular permits exceed the cap, the board shall take action in a manner consistent with the Act so that the aggregate total of all authorized initial regular permit withdrawal amounts upon issuance of final orders does not exceed the cap.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714953
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter F. Standard Groundwater Withdrawal Permit Conditions

31 TAC §705.101

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.101. Standard Groundwater Withdrawal Permit Conditions. A groundwater withdrawal permit shall be issued subject to the following conditions listed in paragraphs (1)-(18) of this section as appropriate for the category of permit:

(1) the payment of all applicable aquifer management and special fees assessed by the Authority pursuant to fee orders or resolutions adopted by the board;

(2) beneficial use and not wasted;

(3) the comprehensive management, critical period management, reuse, conservation, or demand management plan, or any other plan adopted by the Authority;

(4) the provision of instream uses, bays and estuaries, as may be applicable;

(5) interruption under the conditions established by the board;

(6) unless waived by the Authority based on an approved alternative measurement method pursuant to the Edwards Aquifer Act (Act), §1.13(a) at the cost of the permittee, or the Authority, as appropriate, the permittee must install and maintain an Authority-approved measuring device designed to indicate the flow rate and cumulative amount of water withdrawn by the well. The permittee shall provide to the Authority within 30 days after the date of issuance of the permit the measuring device installation plans and specifications, and an installation schedule for review and approval by the Authority;

(7) the withdrawal reduction plans of the Authority and, upon the conclusion of all contested case hearings, the authorized withdrawal amount under this permit, to the extent the permit remains in effect and is not retired by that time, shall be subject to adjustment consistent with the Act so that the aggregate total of all authorized initial regular permit withdrawal amounts that remain in effect, and are not otherwise adjusted by that time, does not exceed the cap;

(8) the permit retirement program of the Authority;

(9) proportional adjustments pursuant to the Act, §1.16(e) and §1.21(c);

(10) proportional reduction restorations, as may be applicable pursuant to the Act, §1.21(c);

(11) the waste prevention program of the Authority;

(12) the water quality program of the TNRCC and the Authority;

(13) the well(s) from which the withdrawals pursuant to the permit are made shall be constructed in compliance with the well construction program of the TNRCC and the Authority;

(14) abandonment, cancellation or retirement;

(15) compliance with the Act;

(16) compliance with Authority rules;

(17) compliance with the permit; and

(18) any other conditions, consistent with the Act and these rules, as are appropriate in the discretion of the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714954

Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter G. Reporting

31 TAC §705.111, §705.113

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.111. Annual Water Use Reports.

(a) Annual reports. Every permittee who withdraws water from the aquifer during the preceding calendar year shall submit a written report to the Authority. Blank forms for recording the information shall be mailed to all holders of interim authorization status and permittees during January of each year. Water use report forms shall be furnished to anyone on request. In completing the report, a permittee shall fill in the blanks to the best of his ability in accordance with the instructions that accompany each form. The report must be returned to the general manager no later than March 1 of each year.

(b) No report is required to be filed by persons owning an exempt well.

§705.113. Water Well Drillers Logs.

Every licensed driller drilling, deepening or otherwise altering a water well within the Authority boundaries that withdraws water from the aquifer shall make and keep a legible and accurate well log in accordance with forms prescribed by the Authority. Not later than the 60th day after the completion or cessation of drilling, deepening or otherwise altering the well, the licensed driller shall furnish a copy of the well log to the Authority and to the well owner or the person for whom the well was drilled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
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Subchapter H. Transfers

31 TAC §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157, 705.159, 705.161, 705.171, 705.173

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.131. Applicability.

(a) This subchapter applies to transfers of interim authorization status and regular permits.

(b) This subchapter does not apply to term or emergency permits. These permits are not transferable.

§705.133. Transfers Authorized .

(a) Transfers from one person to another of interim authorization status, regular permits, irrigable lands, and wells or other works are authorized.

(b) Except as provided in §705.137 of this title (relating to Land Transactions Involving Irrigation Rights) and §705.139 of this title (relating to Leases of Irrigation Rights) the title or other interest in interim authorization status and regular permits may be transferred

separately from the transfer of ownership or other interest in any well or other work from which the water is authorized to be withdrawn and separately from ownership or other interest in any lands on which the water is authorized to be used.

§705.135. Transfers Not Presumed.

Except as provided in §705.137 of this title (relating to Land Transactions Involving Irrigation Rights) unless the transfer agreement clearly specifies that title or other interest is being conveyed to the transferee, the Authority will presume that the transferor did not convey any title to or other interest in an interim authorization status, regular permit, irrigable lands, well or other works.

§705.137. Land Transactions Involving Irrigation Rights.

Interim authorization status and regular permits for irrigation use are appurtenant to the land and must pass with the transfer of the land constituting the place of use. Where a transferor transfers all or part of any irrigable lands constituting the place of use, then the portion of the permit attributable to the irrigable lands will transfer to the new land owner. Interim authorization status or a regular permit remains appurtenant to the irrigable land and may not be amended to change the purpose of use.

§705.139. Lease or Sale of Irrigation Rights.

(a) A transferor may not lease more than 50% of his interim authorization status or regular permit for irrigation use. If the land is transferred, the permit must remain an irrigation permit and the water right must remain with the land or be transferred to an irrigating landowner. A transferor may only sell that portion of an irrigation permitted groundwater right that is conserved through installation of conservation equipment.

(b) After a lease term has expired, neither the transferee nor any beneficiary of the transferee may bring any claim for continued use of the groundwater made available by the transfer, whether based on reliance, water shortage or any other cause.

§705.141. Sales of Interim Authorization Status or Regular Permits.

A transferor may sell all or part of his interim authorization status or regular permit attributable to conservation by the installation and placing to use of water conservation equipment of the transferor.

§705.143. Demonstrated Need.

A person may transfer his interim authorization status or regular permit in accordance with the Edwards Aquifer Act and Subchapter H of this chapter (relating to Transfers) to any person with a demonstrated need for the water who is a permittee or an applicant for a groundwater withdrawal permit.

§705.145. Creation of Registry.

(a) The Authority will maintain a registry of interim authorization status it recognizes and groundwater withdrawal permits it has issued.

(b) The registry will be available for review by any member of the public during regular business hours.

(c) The registry will contain a separate file for each recognized interim authorization status and regular permit issued by the Authority containing all transfer agreements related thereto and consist of a separate bound registry in which all transfer agreements are recorded.

§705.147. Filing and Recording Transfer Agreements.

(a) The transferee must file an original of the transfer agreement with the Authority. The Authority on the day of receipt must file a copy of the transfer agreement in the file for the appropriate interim authorization or regular permit, and file and record the transfer agreement in the register, indicating the volume and page number of the registry in which it is recorded and return the original to the transferee.

(b) The transfer agreement must clearly define the following:

(1) the name, address, and telephone number of the transferor;

(2) name, address, and telephone number of the transferee;

(3) the interim authorization status, regular permit irrigable land, well or other works, and the legal interest in each being transferred;

(4) the legal description and location of the well(s) from which the groundwater has been withdrawn by the transferor, and the well(s) from which the transferee will make withdrawals; and

(5) if the transfer is temporary, the period of time for which the transfer is made.

(c) No transfer agreement will affect an interim authorization status or a regular permit until the agreement is filed with the Authority.

(d) Each transfer agreement must satisfy the requirements of counties for recordation of deeds and other conveyances of real property.

(e) Where two or more transfer agreements are filed with the Authority containing inconsistent provisions regarding an interim authorization status or a regular permit, the agreement that is filed first with the Authority will prevail in determining the right to withdraw and place to beneficial use.

§705.149. Notice of Transfer; Applications to Amend.

(a) The transferee shall file a notice of transfer with the Authority at the same time that the transferee files a transfer agreement.

(b) Filing of the transfer agreement with the Authority will not substitute for the filing of a notice of transfer.

(c) A notice of transfer shall be submitted on a form prescribed by the Authority. The transfer agreement shall be attached to the notice of transfer. The notice of transfer must include a written statement, signed under penalty of perjury by the transferor and the transferee, that the transfer agreement complies with the Edwards Aquifer Act and these rules.

(d) Prior to the withdrawal or placing to beneficial use of groundwater pursuant to the transfer, the transferee must receive prior written approval for an application to amend pursuant to §707.183 of this title (relating to Amendments as a Matter of Right) or §707.185 of this title (relating to Amendments Requiring Notice).

§705.151. Adjustment Rights.

As between the transferor and the transferee, the Authority shall update its records to reflect the effect of the transfer agreement on the rights of each party to make withdrawals from the aquifer.

§705.153. Notice of Termination.

If a transfer is terminated prior to the period of time for which the transfer is made, the transferor shall file with the Authority or notice of termination on a form prescribed by the Authority.

§705.155. Records.

The Authority will maintain current records for each calendar year listing each permittee and the total quantity of water that each

permittee is entitled to withdraw under each interim authorization status and regular permit.

§705.157. Fees.

The Authority may not allow transferees to withdraw or place to beneficial use groundwater from the aquifer until all applicable fees have been paid to the Authority.

§705.159. Transfers Subject to Critical Period Management.

All transfers are subject to the critical period management plan.

§705.161. Transfers Subject to Conservation and Reuse.

All transfers are subject to any conservation and reuse plans of the Authority.

§705.171. Transfer of Interim Authorization Status.

Interim authorization status transfers are temporary and terminate upon the expiration of the interim authorization status of the transferor pursuant to Edwards Aquifer Act, §1.17(d) and §705.255 of this title (relating to Period of Interim Authorization).

§705.173. Transfers of Groundwater Rights Owned by Federal Agencies.

(a) A Federal agency may transfer its interim authorization status or its regular permit to another federal agency.

(b) If the transferor is a federal agency and it transfers its interim authorization status or its regular permit to an entity other than a federal agency, but the federal agency continues to make withdrawals from the aquifer as if it has not made a transfer, then the Authority will not recognize the transfer and will not authorize the transferee to make withdrawals of and placing to beneficial use of groundwater from the aquifer pursuant to the transfer, nor approve an application to amend the transferor's regular permit, if applicable.

(c) If the transferor is a federal agency and it transfers its interim authorization status or its regular permit to an entity other than a federal agency and the federal agency permanently ceases to make withdrawals from the aquifer and the transfer agreement so provides, then the Authority will recognize the transfer, process the transfer according to this subchapter, and take appropriate action on an application to amend the interim authorization status or regular permit if applicable.

(d) If the Authority recognizes the transfer from a federal agency and approves an application to amend, if applicable, then the transferee shall be bound by the terms and conditions contained in the federal agency's interim authorization status or regular permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714956
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter I. General Prohibitions

31 TAC §§705.221, 705.223, 705.225, 705.227, 705.229, 705.231, 705.233, 705.233, 705.235, 705.237, 705.239, 705.241

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.221. Anti-Exportation Outside Authority Boundaries.

Groundwater withdrawn from the aquifer must be used within the Authority boundaries. Groundwater withdrawn from the aquifer that is processed into a commodity is deemed to be used at the place of production rather than at the place of ultimate retail sale.

§705.223. Anti-Exportation Via Transport Facilities Outside of Uvalde or Medina Counties.

The Authority may not allow any person to construct, acquire or own facilities for transporting groundwater out of Uvalde County or Medina County.

§705.225. Well Withdrawals After June 1, 1993.

(a) Except as provided in subsection (b) of this section, the Authority may not allow withdrawals from the aquifer through new wells.

(b) The prohibition of subsection (a) of this section does not apply if the withdrawal from a new well is based on:

(1) a transfer of an interim authorization status;

(2) a transfer of a regular permit;

(3) a permit issued by the Authority to the owner of the new well; or

(4) an exempt well.

§705.227. Permit Requirement.

Except as provided in the Edwards Aquifer Act, §§1.16(c), 1.17(a) and 1.33(a) and (c) and §705.11 of this title (relating to Withdrawals Not Requiring a Groundwater Withdrawal Permit), a person may not withdraw water from the aquifer except as authorized by a groundwater withdrawal permit issued by the Authority. Constructing, drilling, equipping, completing, altering, or operating a well without a well construction permit is illegal and a nuisance.

§705.229. Registration Requirement.

Except as provided by §707.201 (relating to Wells Not Requiring Registration), a person may not begin drilling a new well without a registration form on file with and approved by the Authority.

§705.231. Compliance with Permit.

A permittee may not violate the permit's terms or conditions.

§705.233. Compliance with the Edwards Aquifer Act(Act).

A person may not violate the Act.

§705.235. Compliance with Rules.

A person may not violate a rule of the Authority adopted under the Edwards Aquifer Act.

§705.237. Waste Prevention.

A person may not waste water withdrawn from the aquifer. Drilling a well without a required permit or operating a well at a higher rate of production than the rate approved for the well is declared to be wasteful per se.

§705.239. Pollution of the Aquifer.

A person may not pollute or contribute to the pollution of the aquifer.

§705.241. Unauthorized Production Rates.

Operating a well at a higher rate of production than the rate approved for the well is declared to be illegal and a nuisance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714957
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter J. Interim Authorization

31 TAC §§705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265, 705.267

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §705.1 - §1.01; §705.11 - §§1.16, 1.17, 1.33; §705.13 - §1.15, §1.33; §705.15 - §§1.2, 1.14-1.16, 1.31-1.33; §705.17 - §1.14; §705.19 - §1.33; §§705.21, 705.23, 705.25 - §1.11, §1.33; §705.27 - §§1.15, 1.17, 1.33; §705.41 - §1.15; §705.51 - §1.03, §1.15; §705.61 - §§1.15, 1.16, 1.18-1.20; §705.63, §705.65 - §1.11, §1.15; §705.67 - §§1.03, 1.14-1.16, 1.19, 1.20; §705.69 - §1.15, §1.18; §705.71 - §1.15, §1.19; §705.73 - §1.15, §1.20; §705.75 - §1.15; §705.77 - §1.16; §705.101 - §§1.03, 1.11, 1.13-1.16, 1.19, 1.21-1.23, 1.25, 1.26, 1.28, 1.29, 1.31, 1.32, 1.34; §705.111 - §1.32, §705.113 - §1.11; §§705.131, 705.133, 705.135, 705.137, 705.139, 705.141, 705.143, 705.145, 705.147, 705.149, 705.151, 705.153, 705.155, 705.157 - 1.34; §705.159 - §1.25, §1.34; §705.161 - §1.23, §1.34; §705.171 - §1.17, §1.34; §705.173, §705.221 - §1.34; §705.223 - §1.28; §705.225 - §1.14; §705.227 - §§1.15-1.17; §705.229 - §1.33; §§705.231, 705.233, 705.235 - §1.11; §705.237 - §1.03, §1.14; §705.239 - §1.14; §705.241 - §1.11; §705.251, §705.253 - §1.17; §705.255 - §§1.11, 1.15, 1.17; §§705.257, 705.259, 705.261 - §1.15, §1.17; §705.263 - §1.32; §705.265 - §1.29; §705.267 - §1.11.

§705.251. Eligibility for Interim Authorization Status.

An existing user who, on June 28, 1996, owns an operating well that withdraws groundwater from the aquifer qualifies for interim authorization status.

§705.253. Effect of Interim Authorization Status.

An existing user who qualifies for interim authorization status may continue to withdraw and beneficially use groundwater without waste during the interim authorization period.

§705.255. Period of Interim Authorization.

(a) Interim authorization begins June 28, 1996.

(b) Interim authorization ends:

(1) on the date of entry of the last final and appealable order by the board acting on an application for an initial regular permit; or

(2) on December 30, 1996, if the existing user has not filed a declaration on or before that date.

§705.257. Groundwater Withdrawal Amounts During Interim Authorization.

(a) Nature of Withdrawals. The amount of groundwater withdrawals made during the interim authorization period are determined pursuant to Edwards Aquifer Act(Act), §1.17(b) and are made under the authority of interim authorization, unless the withdrawals from a well are not required to be permitted under §705.11 of this title (relating to Withdrawals not Requiring a Groundwater Withdrawal Permit).

(b) Total Withdrawal Amount. Except as provided in §705.259 (a)(1) and (2) of this title (relating to Adjustment of Aggregate Total of Interim Authorization Withdrawal Amounts) the total amounts of actual withdrawals during interim authorization may not exceed the cap.

(c) Interim Authorization Withdrawal Amounts.

(1) Beginning on the effective date of these rules to December 31, 1998, an existing user who withdrew groundwater from the aquifer during 1996 may withdraw an amount not to exceed the existing user's total groundwater withdrawals from the aquifer in 1996.

(2) Beginning January 1, 1999 to December 31, 1999, the board shall adjust the aggregate total of authorized interim authorization withdrawals by reducing each existing user's interim authorization withdrawal amount by five percent of the 1996 interim authorization withdrawal amounts.

(3) Beginning January 1, 2000, to the end of the interim authorization period, an existing user may withdraw the amount set out in the proposed initial regular permit proposed by the general manager, or the amount set out in an interlocutory order on an initial regular permit issued by the board.

(d) Maximum Historical Use Limitation. Notwithstanding the amounts authorized to be withdrawn during the initial interim

authorization period, withdrawals under interim authorization status may not exceed on an annual basis the historical, maximum, beneficial use of water without waste during any one calendar year as evidenced by the existing user's declaration.

(e) Application to Withdraw. An existing user with interim authorization status may apply to make additional withdrawals on a form prescribed by the Authority. If the applicant has obtained a transfer or an interim authorization status from another existing user who withdrew groundwater during 1996, then the request shall be granted by the board. If the requested amount is equal to or below an initial regular permit minimum withdrawal amount for which a prima facie showing has been established in a declaration, or the proposed initial regular permit, when issued, the request shall be granted by the board. If the requested amount exceeds a minimum amount, the application may be granted by the board if:

(1) the applicant shows good cause why a term or emergency permit is unsuitable to meet the applicant's needs for additional groundwater;

(2) the applicant has established a prima facie case in its declaration that the applicant qualifies for an initial regular permit;

(3) the applicant demonstrates good cause for a current need for the additional groundwater;

(4) no other available source of water is reasonably available;

(5) the critical period management plan is not in effect; and

(6) the applicant is in compliance with the Act and these rules.

(f) Withdrawal Quantity After the Issuance of a Final Order on an Application for Initial Regular Permit. After the issuance by the board of a final and appealable order granting an initial regular permit, then the right to withdraw groundwater from the aquifer under interim authorization ceases and the initial regular permit withdrawal amount applies. If the board issues a final and appealable order denying an initial regular permit, then the right to withdraw groundwater from the aquifer under interim authorization ceases.

(g) Board's final determination on any application for an initial regular permit. No determination made by the board under this section shall in any way bind either with respect to any issue of fact or law, or in any other way affect the board's final determination on any application for an initial regular permit.

§705.259. Adjustment of Aggregate Total of Interim Authorization Withdrawal Amounts.

(a) The total of all interim authorization withdrawal amounts may not exceed:

(1) for the period beginning on the effective date of these rules to December 31, 1998, the total applicable withdrawals from the aquifer made for the calendar year 1996 as determined by the U.S.G.S.;

(2) for the period beginning on January 1, 1999, to December 31, 1999, the amount determined in subsection (a)(1) of this section less five percent; and

(3) for the period beginning January 1, 2000, the cap.

(b) If at any time any action of the general manager or the board results in the total authorized interim authorization withdrawal amounts to exceed the total amounts in subsection (a)(1), (2) or (3) of this section for the relevant period, then the general manager shall within 10 days of the action, give notice to the board of this result. Within 30 days of the notice given to it by the general manager, the board may enter an order proportionately adjusting the interim authorization withdrawal amounts on all existing users authorized to make interim authorization withdrawals. The general manager shall immediately give notice to all existing users of his action or the action of the board. Any proportional adjustment order issued by the board under this subsection shall recognize the initial regular permits minimum withdrawal amounts.

§705.261. Interim Authorization Groundwater Withdrawal Conditions.

Groundwater withdrawals based on interim authorization status are conditioned as follows and must:

(1) not exceed on annual basis the historical, maximum, beneficial use of water without waste during any one calendar year of the historic period as evidenced by the existing user's declaration;

(2) protect the water quality of the aquifer;

(3) protect the water quality of the surface stream to which the aquifer provides springflow;

(4) achieve water conservation;

(5) maximize the beneficial use of water available for withdrawal from the aquifer;

(6) protect aquatic habitat;

(7) protect wildlife habitat;

(8) protect species that are designated as threatened or endangered under applicable federal or state law;

(9) prevent waste;

(10) provide for instream uses, bays and estuaries;

(11) comply with all well construction law;

(12) comply with all well approval law;

(13) comply with all well location law;

(14) comply with all well spacing law;

(15) comply with all well operations law;

(16) file a declaration on or before December 30, 1996;

(17) comply with the critical period management plan;

(18) comply with all rules of the Authority; and

(19) comply with the comprehensive management plan of the Authority.

§705.263. Reports.

An existing user qualifying for interim authorization status shall comply with §705.111 of this title (relating to Annual Water Use Reports).

§705.265. Fees.

Existing users qualifying for interim authorization status are subject to the payment of aquifer management and special fees assessed by the Authority.

§705.267. Amendments.

An existing user shall amend his interim authorization status in conformance with Chapter 707, Subchapter J of this title (relating to Additional Requirements for Applications to Amend).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714958
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Chapter 707. Procedural Groundwater Withdrawal Permit Rules

The Edwards Aquifer Authority (EAA) proposes new §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.55, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.181, 707.183, 707.185, 707.187, 707.189, 707.191, 707.193, 707.201, 707.203, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723, concerning procedural groundwater withdrawal permit rules. The new rules are being proposed as a result of Senate Bill 1477 (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2353), which requires the EAA to develop a groundwater withdrawal permitting program. The current permit program rules of the EAA (Chapter 701 of this title) are: not comprehensive; not structured to accommodate future rulemaking; and contain positions that don't represent the views of the board of directors or general manager of the EAA, or after additional legal view contain legal positions that are inconsistent with the view of the current general counsel.

The board of directors of the EAA and its permit committee directed general counsel to reevaluate the rules, develop an organized rulemaking framework and index in anticipation of future rulemaking, reogranize the current rules as necessary, develop a comprehensive, intergrated permit program, and address issues that are not addressed by the current rules.

Gregory M. Ellis, general manager, Edwards Aquifer Authority, has determined that except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local governments.

Mr. Ellis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be certainty with regard to the amount of underground water from the Edwards Aquifer a permit holder can withdraw. The public will also benefit from the preservation of spring flows and the consequent preservation of endangered species, and once the amount of water authorized in a permit for a public entity such as a municipality is known, that information will serve as a planning tool for developing and conserving water supplies in the future. These rules will not have an adverse economic impact on small businesses. Except for the cost involved in filing declarations for historical use, applications for term permits, applications for emergency permits, and applications for well construction permits, there is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public meetings on the proposed new sections will be held at a later specified date. Notice of the public meetings will be published in a later issue of the *Texas Register*. The meetings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when call upon in order of registration. Open discussion within the audience will not occur during the meeting; however, the general manager or other EAA staff member will be available before and after the meetings to discuss the proposal and to answer questions.

Written comments on the proposed new sections not presented at a public meeting may be submitted within 30 days after publication in the *Texas Register* to Gregory M. Ellis, General Manager, Edwards Aquifer Authority, P.O. Box 15830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030, or by facsimile (210) 222-9748.

Subchapter A. Jurisdiction of the Edwards Aquifer Authority

31 TAC §707.1, §707.3

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405,

707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.1. Permit Program Administration.

The Authority's general manager is responsible for the administration of the Authority's permit program.

§707.3. Permit Decision-Making Authority.

(a) Except as provided in subsection (b) of this section, the board shall issue all orders concerning applications for groundwater withdrawal permits.

(b) The general manager may issue well construction permits.

(c) The groundwater withdrawal permitting jurisdiction of the Authority extends only to wells located within the Authority boundaries that withdraw groundwater from the aquifer.

(d) The Authority has no jurisdiction to regulate the use of surface water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714959
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter B. General Requirements

31 TAC §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.21. Computation of Time.

In computing any period of time prescribed or allowed by Authority regulation or orders, or by any applicable statute, the period shall begin on the day after the act, event, or default in question, and shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday on which the Authority is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday on which the Authority is closed.

§707.23. Initiation of Proceeding.

A person who wishes to initiate a proceeding at the Authority should submit a written application or registration to the general manager on a form prescribed by the Authority. The Authority rules set forth the requirements of the specific types of proceedings and the final actions taken thereon by the board or general manager on a form prescribed by the Authority.

§707.25. Docket Clerk.

The general manager shall designate a docket clerk for the Authority. The docket clerk shall assign a docket number to each matter scheduled for consideration during a board meeting or contested case referred to SOAH.

§707.27. Document Filing Procedures.

(a) All documents to be considered in a board meeting or by judges in contested cases shall be filed with the docket clerk. Hearing requests and responses shall also be filed with the docket clerk.

(b) If a docket number has been assigned, it should appear on the first page of all filed documents.

(c) Documents shall be filed by mail, facsimile or hand delivery. If a person files a document by facsimile, he must file with the docket clerk the appropriate number of copies by mail or hand delivery within three days.

(d) The original and one copy of a document shall be filed.

(e) The time of filing is upon receipt by the docket clerk as evidenced by the date stamp affixed to the document by the docket clerk, or as evidenced by the date stamp affixed to the document or envelope by the Authority mail room, whichever is earlier.

(f) The docket clerk shall accept all documents presented for filing. The docket clerk's acceptance is not a determination that a document meets filing deadlines or other requirements.

(g) If the requirements of this section are not followed, the board, the general manager or a judge in a SOAH proceeding may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the board may choose not to consider documents filed within two days of a board meeting.

(h) The judge may waive one or more of the requirements of this section, or impose additional filing requirements in proceedings

under this section, or impose additional filing requirements in SOAH proceedings. The board may waive one or more of the requirements of this section or impose additional filing requirements for meetings of the board.

(i) This section does not apply to offers of evidence during a hearing.

§707.29. Service of Documents.

(a) For all pleadings concerning hearing requests filed under Subchapter O of this chapter (relating to Requests for Contested Case Hearings), copies of all pleadings filed with the docket clerk shall be served on the general counsel of the board, the general manager, the applicant, and other any persons filing hearing requests, no later than the day of filing.

(b) For contested case hearings referred to SOAH, copies of all documents filed with the docket clerk shall be served on the judge and all parties or their representatives no later than the day of filing.

(c) All documents filed and served under these rules, except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person, by agent, by courier-receipted delivery or by mail, to the party's last known address or by telephonic document transfer to the recipient's current telecopier number or by such other manner as the board or judge in its discretion may direct.

(d) Service by mail is complete upon deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by courier-receipted delivery is complete upon the courier taking possession. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Service by telephonic document transfer must be followed by serving an extra copy in person, by mail or by carrier-receipted delivery within one day. Judges may impose different service requirements in SOAH proceedings.

(e) Whenever a party has the right or is required to do some act within a prescribed period after the service of a document upon the party and the document is served by mail or by telephonic document transfer, three days shall be added to the prescribed period. Three days will not be added when documents are filed for consideration in a board meeting.

(f) The party or attorney of record shall certify compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record or the return of an officer or the affidavit of any person showing service of a document shall be prima facie evidence of the fact of service.

(g) Nothing herein shall preclude any party from offering proof that the notice or instrument was not received or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the board or judge may extend the time for taking the action required of such party or grant such other relief as they deem just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

§707.31. Change of Address or Telephone Number.

Declarants, applicants, registrants, or permittees shall give written notice to the Authority of any change of mailing address or telephone number within 30 days of the change.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-9714960
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

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Subchapter C. Requirements for All Applications

31 TAC §§707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.55, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.41. Requirement to File an Application.

(a) Any person seeking to withdraw groundwater from the aquifer, unless exempted from the permit requirement by the Edwards Aquifer Act, §1.16(c) and §1.33 and §705.11 and §705.13 of this title (relating to Withdrawals Not Requiring a Groundwater Withdrawal Permit, or Wells Not Requiring a Well Construction Permit, respectively), must file an application for a groundwater withdrawal permit and a well construction permit with the Authority. A declaration is deemed to be an application for an initial regular permit.

(b) Any person seeking to construct or modify a well or other works, unless exempted from the permit requirement by these rules, must file an application for a permit to construct or modify the well or works with the Authority.

§707.43. Use of Forms.

The general manager will furnish, without charge, forms and instructions for preparing a declaration or an application. The use of such forms is mandatory. Supplements may be attached if there is not sufficient space on the printed form. If supplements are used, the data and information entered thereon shall be separated into paragraphs numbered to correspond with those on the printed form.

§707.45. Preparation of Application.

All applications shall be typewritten or printed legibly in ink. Illegible applications will be returned to the applicant. Applicants will be notified if additional information is needed to process an application, pursuant to §707.227 of this title (relating to Technical Review). The applicant should confer with the Authority staff on any questions concerning preparation of the application. Upon express written or verbal approval of the applicant or the applicant's agent, any Authority employee may make non-substantive changes in any documents submitted by the applicant. Substantive changes in an application may be made only by the applicant or the applicant's agent who submitted the application and only in the form of a written, notarized amendment to the application signed by the proper person; provided, however, that no substantive changes may be made after an application has been filed by the general manager with the Authority's docket clerk.

§707.47. Name and Address.

For each applicant, the full name, post office address and telephone number shall be given. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be designated by the trustee's name followed by the word "trustee." If one other than the named applicant executes the application, the name, position, post office address and telephone number of the person executing the application shall be given.

§707.49. Source of Supply.

The applicant shall clearly state that the aquifer is the source from which the withdrawal or use of groundwater is proposed. If, on the face of the application, or after technical review by the Authority staff pursuant to §707.227 of this title (relating to Technical Review), it is determined the groundwater source is not the aquifer, then the Authority will return the application to the applicant and not process the application.

§707.51. Amount and Purpose of Withdrawal and Use.

The total amount of groundwater to be withdrawn and beneficially used shall be stated in definite terms, i.e., a definite number of acre-feet annually or, in the case of an emergency or term permit application, over the period for which application is made. The purpose of each use shall be stated in definite terms. If the groundwater is to be used for more than one purpose, the specific amount to be used for each purpose shall be clearly set forth. If the amount to be consumptively used is less than the amount to be withdrawn, both the amount to be withdrawn and the amount to be consumptively used shall be specified.

§707.53. Rate and Method of Withdrawal.

The maximum rate of withdrawal in gallons per minute or cubic feet per second shall be stated. The method to be used shall be described as portable pump, stationary pump or artesian flow.

§707.55. Location of Point of Withdrawal.

The application shall state the location of point(s) of withdrawal. These locations shall also be shown on the application maps with reference to a corner of an original land survey and/or other survey point of record, giving both course and distance. The distance and direction from the nearest county seat or town shall also be stated.

§707.57. Signature of Applicant.

(a) This section applies to declarations and applications. As used in this section, the term "application" includes a declaration.

(b) The application shall be signed as follows.

(1) If the applicant is an individual, the application shall be signed by the applicant or the applicant's duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant. If the applicant is an individual doing business under an assumed name, the applicant shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(2) A joint application shall be signed by each applicant or each applicant's duly authorized agent, with written evidence of such agency to be submitted with the application. If a well is owned by both husband and wife, each shall sign the application. Joint applicants shall select one among them to act for and represent the others in pursuing the application with the Authority, with written evidence of such representation to be submitted with the application.

(3) If the application is by a partnership, the application shall be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, it shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(4) If the applicant is an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate, and a current copy of the letters issued by the court shall be attached to the application.

(5) If the applicant is a corporation, public district, county, municipality or other corporate entity, the application shall be signed by a duly authorized official. Written evidence in the form of by-laws, charters, or resolutions that specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant is acting as trustee for another, the applicant shall sign as trustee, and in the application shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

§707.59. Sworn Application Required.

Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

§707.61. Filing of Applications.

(a) Received Date. All applications filed with the general manager shall be stamped or marked "Received" and the date thereof clearly indicated.

(b) Acceptance of Groundwater Withdrawal Permit Applications for Filing. Any groundwater withdrawal permit application requiring Authority action shall not be formally accepted for filing by the Authority until it is reviewed by the general manager as to form, fees, and data required by law and declared administratively complete under §707.251 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). No substantive changes may be made after an application has been filed

by the general manager with the Authority's docket clerk. Applications for groundwater withdrawal permits or amendments to permits shall not be considered filed until declared administratively complete by the general manager and filed by the general manager with the Authority's docket clerk.

§707.63. Application Fees Required.

Statutory fees must accompany an application for it to be considered by the Authority. The filing fee for an application or a declaration is $25. Authority employees are prohibited from processing any application unless the proper fees are tendered. The general manager shall charge and collect for the benefit of the Authority the fees, and it shall be his duty to make a record thereof at the time it becomes due and to render an account to the party charged therewith. Each fee is a separate charge and is in addition to other fees, unless provided otherwise.

§707.65. Copies.

An applicant shall file with the general manager an original and one copy of the declaration or application and any other document filed with the Authority in connection therewith.

§707.67. Right to Supplement.

If any pending application is affected by a change in these rules before final action on the application, the applicant shall have a right to supplement the application as necessary to comply with or receive the benefit of the rules change.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
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Subchapter D. Declarations of Historical Use

31 TAC §§707.81, 707.83, 707.85, 707.87, 707.89. 707.91, 707.93

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.81. Applicability.

This subchapter and Subchapter C of this chapter (relating to Requirements for All Applications) govern the filing of declarations.

§707.83. Requirement to File Declaration.

Except as provided in §707.93 of this title (relating to Exception for Exempt Wells), a declaration shall be filed with the Authority pursuant to the Edwards Aquifer Act, §1.16(a) and in accordance with this subchapter, for each well from which groundwater from the aquifer has been withdrawn and placed to beneficial use during the historical period.

§707.85. Proper Declarants.

An existing user may file a declaration for a well. If there are multiple existing users for a well, then a joint declaration shall be filed by each existing user. Joint declarants shall select one among them to act for and represent the others in the processing of the declaration. Written documentation of the representation satisfactory to the Authority shall be filed with the declaration.

§707.87. Time and Place for Filing.

A declaration and application fee shall be filed with the Authority:

(1) at the Authority offices no later than 5:00 p.m. on Monday, December 30, 1996; or

(2) deposited in the United States mail enclosed in a postpaid envelope properly addressed to the Authority that bears an official postmark date of no later than Monday, December 30, 1996.

§707.89. Declarations Received Before November 21, 1996.

Declarations received by the Authority or the EUWD before November 21, 1996, will be considered received by the Authority as of November 21, 1996. Declarants filing declarations must file a completed declaration and application fee with the Authority, but need not resubmit information submitted before November 21, 1996 and identified in the declaration, unless requested to do so by the general manager.

§707.91. Contents.

A declaration must contain the following information listed in paragraphs (1)-(16) of this section:

(1) the declarant's name, address and telephone number, and the name, address and telephone number of the authorized agent of the declarant(s), if any, and the relationship of the authorized agent to the declarant(s), including written documentation showing that the representative agent is authorized to file the declaration;

(2) if there are multiple declarants, a statement designating one declarant as the representative of the other declarants,

including written documentation showing the authority of the designated declarants to act for the other declarants for purposes of the processing of the declaration;

(3) the name, address, and telephone number of the person in whose name an initial regular permit is to be issued;

(4) if the person in whose name the permit is sought to be issued is a corporation, partnership or other business entity and the names, addresses, and telephone numbers of the principal owner(s) and officers of the entity;

(5) facts showing that the declarant is eligible to file a declaration and seek an initial regular permit;

(6) for those persons seeking to qualify for an initial regular permit minimum withdrawal amount based on an historical average pursuant to the Edwards Aquifer Act(Act), §1.16(e) and §703.1 of this title (relating to Definitions), the total amount of water from the aquifer that the declarant or his contract user, prior user or former existing user withdrew and beneficially used without waste during each calendar year of the historical period;

(7) for those declarants seeking to qualify for an initial regular permit minimum withdrawal amount based on irrigation of two acre-feet multiplied by the number of acres actually irrigated during any one calendar year of the historical period pursuant to the Act, §1.16(e) and §703.1 of this title (relating to Definitions) the maximum number of acres irrigated during any one calendar year of the historical period;

(8) the purpose(s) for which the groundwater was used during each year of the historical period;

(9) the amount of groundwater the declarant claims as its maximum beneficial use of water without waste during any one calendar year of the historical period;

(10) the number and location of each well owned by the declarant and for which the declarant claims groundwater from the aquifer was withdrawn and placed to beneficial use during the historical period and the amount of water withdrawn from each well during each year of the historical period;

(11) the place of use of groundwater withdrawn from each well;

(12) if the groundwater was withdrawn from the well or placed to a beneficial use by a contract user, prior user or former existing user, then the name, address and telephone number of each contract user, prior user or former existing user the year of withdrawals, purpose and use, place of use and amount of withdrawals, including copies of the legal documents establishing the legal right of the contract user to withdraw and/or place groundwater from the aquifer to beneficial use;

(13) any facts upon which the declarant requests equitable adjustment because the declarant's historic use was affected by a requirement of or participation in a federal program;

(14) if the groundwater is to be sold on a wholesale or bulk basis, whether metered or unmetered, transported or transferred, a description of how the groundwater will be sold, transported or transferred, the name, address and telephone number of every person to whom the water will be delivered, the location to which the groundwater will be delivered, and the purpose for which the groundwater will be used, including copies of the legal documents establishing the right for the groundwater to be sold, transported or transferred;

(15) a separate Well Information Sheet prescribed by the Authority or a registration form from a groundwater district or other entity with the same data as the Well Information Sheet for each well, accompanied by a photograph of the well taken approximately 100 feet from the well head; and

(16) any other information that the general manager may require.

§707.93. Exception for Exempt Wells.

An owner of an exempt well is not required to file a declaration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter F. Additional Requirements for Additional Regular Permits

31 TAC §707.121

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.121. No Action on Applications.

No person owning an existing well for which there is no evidence of actual beneficial use before June 1, 1993, may apply for an additional regular permit until a final determination has been made on all initial regular permit applications submitted on or before December 30, 1996. Any person owning an existing well for which there is evidence of actual beneficial use before June 1, 1993, may apply for an additional regular permit if, after issuance of initial regular permits to existing users, there remains groundwater available for permitting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter G. Additional Requirements for Term Permits

31 TAC §707.131, §707.133

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.131. Additional Contents of Application.

Any applicant for a term permit shall submit the following information listed in paragraphs (1)-(11) of this section:

(1) a comprehensive list of all other permits issued by the Authority to the applicant;

(2) evidence establishing that the applicant can beneficially use the groundwater to be authorized by the term permit;

(3) evidence that the applicant is eligible to seek a term permit;

(4) a statement of the nature and purpose(s) of the proposed use and the amount of groundwater to be used for each purpose;

(5) a description of proposed water conservation measures to be implemented, including a water conservation plan;

(6) the identification and location of each existing or proposed well and the estimated rate at which groundwater will be withdrawn under the term permit;

(7) a description of the proposed device for measuring total groundwater withdrawn from the aquifer under the term permit;

(8) identification of the aquifer pool that is the source of the groundwater to be used;

(9) a description of proposed water reuse measures, if applicable, to be implemented including a water reuse plan;

(10) if the purpose is for irrigation, then documentation of the acres to be irrigated; and

(11) a statement of the proposed period of time for which the term permit is requested.

§707.133. Application to Renew.

A term permit may be renewed by filing an application to renew with the Authority on a form provided by the Authority. The application must be filed with the Authority 180 days before the term permit is due to expire. The application to renew shall be processed as if it were an original application for a term permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter H. Additional Requirements for Emergency Permits

31 TAC §707.151, §707.153

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 -

§1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.151. Additional Contents of Application.

Any applicant for an emergency permit shall submit the following additional information:

(1) evidence that establishes the applicant is eligible to seek an emergency permit;

(2) identification of the location of the point of withdrawal;

(3) the withdrawal rate;

(4) the amount of groundwater to be withdrawn;

(5) a list of all other permits issued by the Authority to the applicant;

(6) the purpose(s) for which groundwater will be used; and

(7) evidence establishing that an emergency permit is necessary to prevent the loss of life or to prevent severe, imminent threats to public health or safety.

§707.153. Applications to Renew.

An emergency permit may be renewed by filing an application to renew on a form prescribed by the Authority. The application must be filed with the Authority before the permit has expired.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter I. Additional Requirements for Well Construction Permits

31 TAC §707.161

The new section is proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.161. Additional Contents of Application.

Any applicant for a well construction permit shall submit the following information listed in paragraphs (1)-(11) of this section:

(1) the name and address of the land owner where the proposed well construction will be located;

(2) the exact proposed location of the well construction site as provided in the application including the county, the section, block and survey, labor and league, and exact number of feet to the two nearest non-parallel property lines (legal survey line) or other adequate legal description;

(3) a list of all permits issued by the Authority and held by the applicant that the well currently services or is proposed to service;

(4) the proposed total depth of the well and proposed depth of cemented casing;

(5) the proposed size of the pump, pumping rate and pumping method;

(6) the current or proposed use of the well, whether municipal, industrial, irrigation, domestic, livestock, recreation, monitor, observation or other use;

(7) the approximate date well construction operations are to begin;

(8) the location of the three nearest wells within a quarter of a mile of the proposed location and the names and addresses of the owners;

(9) the location of any possible sources of contamination such as existing and proposed livestock and poultry yards, septic system absorption fields, petroleum storage tanks, etc.;

(10) name, address, telephone number and license number of the well drilling contractor; and

(11) such additional data as may be required by the general manager.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Manager
Edwards Aquifer Authority
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Subchapter J. Additional Requirements for Applications to Amend

31 TAC §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191, 707.193

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.181. Amendments Required.

(a) All holders of interim authorization status or a regular groundwater withdrawal permit shall file an application to amend and obtain written approval from the Authority prior to changing any of the following:

(1) purpose of use;

(2) place of use;

(3) permitted withdrawal amount;

(4) point of withdrawal;

(5) maximum rate of withdrawal; or

(6) method of metering or measuring withdrawals.

(b) If any of the changes in subsection (a) of this section are the result of a transfer, then the transferee shall file the application.

§707.183. Amendments as a Matter of Right.

(a) Except as provided in §707.185 of this title (relating to Amendments Requiring Notice), a person holding a right to withdraw groundwater from the aquifer pursuant to interim authorization or a regular permit shall have the right to amend the right to:

(1) use the water for any lawful purpose of use;

(2) use the water anywhere within the boundaries of the Authority; and

(3) withdraw the water from any well within the boundaries of the Authority, provided the well is a permitted or interim authorization status well and the person either owns the well or otherwise has the legal right to withdraw or have the water withdrawn from that well.

(b) The general manager shall issue an amendment as a matter of right within 30 days after the date an application for such amendment is filed. The amendment shall be deemed to be granted and issued if, for any reason, the general manager fails to issue the amendment within such time period.

§707.185. Amendments Requiring Notice.

A right to withdraw water from a well located west of Cibolo Creek may not be amended as a matter of right under §707.183 of this title (relating to Amendments as a Matter of Right) to authorize withdrawals from wells located east of Cibolo Creek. All applications to amend the point of withdrawal from a well located west of Cibolo Creek to a well located east of Cibolo Creek may be granted only after giving notice and opportunity for hearing as provided by these rules.

§707.187. Effect on Applications for Well Construction Permits.

Neither the filing of an application to amend a right to authorize withdrawal of the water from a proposed new well or from an existing well that is proposed to be modified to increase its capacity, nor the granting of any such application as a matter of right or otherwise, shall be considered justification for granting an application for well construction permits.

§707.189. Impact Monitoring Reports.

The general manager shall monitor the impacts, if any, resulting from amendments as a matter of right issued pursuant to this section. Not later than two years from the effective date of these rules, the general manager shall prepare a report to the board making his findings and recommendations concerning such impacts.

§707.191. Contents of Application.

An applicant for an amendment to a groundwater withdrawal permit shall file an application prepared in the manner of an original application for a permit. However, the title of the application should be altered to reflect the fact that it is a request for an amendment.

§707.193. Burden of Proof on Applicant.

The applicant has the burden of proof to demonstrate no impairment or injury of another holder of a regular permit, or of the Authority's springflow protection program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter K. Registration of Wells

31 TAC §§707.201, 707.203, 707.205, 707.207, 707.209

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.201. Wells Not Requiring Registration.

The owner of a new well from which withdrawals of groundwater from the aquifer are made pursuant to a groundwater withdrawal permit is not required to register the well.

§707.203. Requirement to Register.

Registrations may be filed by mail or telephonic document transfer on a form prescribed by the Authority. Owners of the following wells shall register the wells with the Authority on a form prescribed by the Authority in an original and one copy at the Authority's offices:

(1) all existing wells; and

(2) except as provided in §707.201 of this title (relating to Wells Not Requiring Registration), all new wells.

§707.205. Time for Filing Registrations.

(a) Registration of existing wells must be filed with the Authority at the Authority's offices no later than 5:00 p.m. on December 31, 1998.

(b) Registration of new wells must be filed with the Authority no later than 30 days before being drilled.

§707.207. Contents of Registration.

A registration application shall contain the following information listed in paragraphs (1)-(13) of this section:

(1) owner's name and address;

(2) legal description of the well, including:

(A) county;

(B) section, block and survey;

(C) labor and league;

(D) number of feet to the two nearest non-parallel property lines (legal survey lines); or

(E) other adequate legal description, approved by the Authority;

(3) a map showing the following information:

(A) the location of the well;

(B) the proximity of the well to any existing platted subdivisions or a planned subdivision requiring platting; and

(C) the location of the well in relation to the corporate limits of municipalities and the extraterritorial jurisdictions of municipalities;

(4) the proposed volume of groundwater capable of being produced from the well;

(5) if the well is located in, serves, or is to serve, a lot in a subdivision, the plat as filed with the governmental entity with jurisdiction over the platting process, or if not platted, a legal statement establishing that the subdivision is not required to be platted;

(6) if the subdivision is required to be platted, then:

(A) the number of service connections served or proposed to be served by the well and the relationship of the owners of the service connections to the registrant, if applicable;

(B) the date the subdivision was platted, if applicable;

(C) a statement demonstrating whether retail potable water supply is available;

(D) a statement demonstrating the percentage of lots within the subdivision that are owned by persons other than the subdivision developer, if applicable; and

(E) the certified registration form for an on-site sewage treatment facility;

(7) total well depth, depth of cement casing, size and other well construction specifications;

(8) size of the pump, pumping rate and pumping method;

(9) the current or proposed use of the groundwater produced from the well;

(10) date of well construction and start of withdrawals from the well;

(11) the location of the three nearest wells within a quarter of a mile;

(12) the location of possible sources of contamination such as existing or proposed livestock or poultry yards, septic system absorption fields, underground or above ground storage tanks; and

(13) other additional information as may be required by the Authority.

§707.209. Registration Fees Required.

Statutory fees must accompany a registration for it to be considered by the Authority. The registration fee is $10. Authority employees are prohibited from processing any registration unless the proper fees are tendered. The general manager shall charge and collect for the benefit of the Authority the fees, and it shall be his duty to make a record thereof at the time it becomes due and render an account to the party charged therewith. Each fee is a separate charge and is in addition to other fees, unless provided otherwise.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter L. Applications Processing

31 TAC §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.221. Purpose.

The Authority's intent is to establish a general policy for the processing of applications for permits and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is Authority policy that applications be processed by the Authority according to this chapter.

§707.223. Initial Review.

Applications shall be reviewed by the general manager for administrative completeness within 30 working days of receipt of the application and appropriate filing fee by the general manager. Before commencement of review of an application under this section, the general manager shall notify the applicant by first-class mail of the date on which the review will commence.

§707.225. Applications Returned.

If an application is not administratively complete, the general manager will notify the applicant of the deficiencies by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the staff will evaluate the information within 30 working days and shall prepare a statement of receipt of the application and determination of administrative completeness in accordance with §707.251 of this title (relating to Notice of Receipt of Application and Determination of Administrative Completeness). If the required information is not forthcoming from the applicant within 30 days of the date of receipt of the deficiency notice, the general manager shall return the incomplete application to the applicant.

§707.227. Technical Review.

(a) After an application is determined by the general manager to be administratively complete on its face, the staff shall commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 90 working days.

(b) The applicant shall be promptly notified of any additional technical material as may be necessary for a complete staff review. If the applicant provides the information within the period of time prescribed by subsection (a) of this section, the staff will complete processing of the application within the technical review period extended by the number of days required for the additional data. If the necessary additional information is not received by the general

manager before expiration of the technical review period and the information is considered essential by the general manager to make recommendations to the Authority on a particular matter, the general manager may return the application to the applicant. In no event, however, will the applicant have fewer than 30 days to provide the technical data before an application is returned. Decisions to return material to the applicant during the technical review stage will be made on a case-by-case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the board for a decision instead of having the application returned.

(c) The general manager or his designee is entitled to enter any public or private property at any reasonable time upon reasonable notice for the purpose of inspecting, investigating or verifying conditions or information submitted in support of an application for a permit.

§707.229. Extension.

If the staff determines that the technical review of an application cannot be completed within the period of time prescribed by §707.227 of this title (relating to Technical Review), the staff will furnish the general manager with written information regarding the reasons that necessitate the delay and the amount of additional time required by the staff to complete the review. Any extension of the period for technical review must be approved by the general manager in writing.

§707.231. Proposed Regular Permit and Technical Summary.

(a) If the application is for a regular permit, then the general manager shall prepare a proposed regular permit consistent with the Edwards Aquifer Act and Authority rules, unless a recommendation is made not to grant the application. The proposed regular permit will be filed with the docket clerk to be included in the consideration of the application for a regular permit and is subject to change during the course of the proceedings on the application. The proposed regular permit shall be available for public review.

(b) If the application is for an initial regular permit, the general manager shall issue the proposed permit and technical summary no later than March 1, 1996.

(c) Technical Summary. The general manager will notify the applicant that technical review of the application has been completed and prepare a technical summary. The summary shall contain:

(1) the total maximum amount of annual historical usage claimed by the applicant;

(2) purpose of use;

(3) amount of withdrawals for each purpose;

(4) the type of groundwater use upon which the claim is based;

(5) location and number of each point of withdrawal;

(6) the total maximum volume of groundwater withdrawn and beneficially used without waste during any one calendar year of the historical period;

(7) maximum rates of withdrawal;

(8) the type and amount of minimum permit withdrawal amounts for which the applicant seeks to qualify;

(9) the type and amount of minimum permit withdrawal amounts determined to be established;

(10) any equitable adjustment made because the applicant's historic groundwater use was affected by a requirement of or participation in a federal program;

(11) metering or measuring devices;

(12) place of use;

(13) applicant's name and address;

(14) notice that the general manager may deny or modify the proposed regular permit, or seek additional information from the applicant, in the course of conducting technical review of other applicants;

(15) any conditions that the final regular permit may be subject to;

(16) notice that the general manager will publish notice in the *Texas Register*;

(17) notice that the applicant may file a protest and request a contested case hearing on or before the 60th day after the date of publication in the issue in which the notice is published in the *Texas Register*; and

(18) other information that the general manager determines appropriate.

§707.233. Referral to Docket Clerk.

When administrative and technical review has been completed, the application shall be forwarded to the docket clerk for filing and setting of the application for action.

§707.235. Application Amendment.

No amendments to applications that would constitute a major amendment as determined by the general manager may be made by the applicant after the docket clerk has issued notice of the application and proposed permit, unless new notice is issued that includes a description of the proposed amendments to the application. For purposes of this section, the transfer of an application shall constitute an amendment requiring additional notice.

§707.237. Supplementation of Application.

An applicant may submit further information in support of an application until the docket clerk has issued notice of the application and the proposed permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222–2204

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Subchapter M. Notices Related to Groundwater Withdrawal Permit Applications

31 TAC §§707.251, 707.257, 707.259, 707.261, 707.263

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.251. Notice of Receipt of Application and Determination of Administrative Completeness.

(a) If an application for a groundwater withdrawal permit other than an emergency permit is received containing the required information, the general manager shall prepare a statement of the receipt of the application and determination of administrative completeness. The general manager shall forward a copy of the application and the statement to the docket clerk.

(b) The docket clerk shall notify every applicant for or holder of a groundwater withdrawal permit by mail of the receipt of the application and the determination of administrative completeness by first-class mail, postage prepaid. The docket clerk shall mail the notice not less than 30 days before the date set for board consideration of the application.

(c) A notice of receipt of application and determination of administrative completeness shall:

(1) state the applicant's name and address;

(2) state the date on which the Authority received the application;

(3) state the date the application was filed by the general manager with the docket clerk;

(4) state that the general manager has determined the application is administratively complete;

(5) state the application number;

(6) state the type of permit the applicant is seeking;

(7) state the purpose and extent of the proposed withdrawal of water;

(8) identify the place where the water is to be withdrawn from the aquifer;

(9) specify the time and location where the board will consider the application;

(10) give a general description of the location and area of any land to be irrigated; and

(11) give any additional information the general manager considers necessary.

(d) The docket clerk shall publish notice of receipt of application and determination of administrative completeness in a newspaper of general circulation throughout the Authority.

(e) The date of publication shall be on or before the date of publication directed by the Authority's docket clerk. In any event, the date of publication shall be not less than 30 days before the date set for board consideration of the application.

§707.257. Applications Not Requiring Notice.

(a) An emergency permit may be granted without the necessity of issuing the notices required for other permits issued by the Authority.

(b) Applications to amend interim authorization and initial regular permits that are specified by these rules as amendments as a matter of right may be granted without the necessity of issuing notice required for other applications.

(c) Other applications to amend permits which, in the judgment of the board as specified by rule or board order, have no potential for harming other applicants for or permittees holding permits, may be granted without the necessity of issuing the notice required for other applications.

(d) Applications for permits to modify wells or other works that do not increase the capacity of the well or work may be granted without the necessity of issuing the notice required for other applications.

§707.259. Notice of Hearing Before the Board.

(a) A hearing before the board on an application may be held without the necessity of issuing further notice other than advising the applicant, general manager, and all persons who have in writing notified the Authority of their interest in the application, of the time and place where the hearing is to convene. The Authority's docket clerk will mail such notice to these persons not fewer than 15 days (including Saturdays, Sundays, and holidays) before the date of the hearing.

(b) Notice of a hearing before the board on an application shall contain a general summary statement of the application, the proposed quantities, uses, and period of use of the applied for groundwater, and a statement of the date, time and place of the hearing.

§707.261. Notice of Proposed Regular Permit and Technical Summary.

(a) Before March 1, 1998 the docket clerk shall mail to each applicant the Authority's proposed regular permit and technical summary.

(b) Notice of the proposed regular permit and technical summary shall contain:

(1) a summary of the proposed regular permit and supporting technical summary, and that a copy of each proposed regular permit and technical summary is available for inspection by the public;

(2) a statement the general manager is proposing to issue a regular permit;

(3) a summary of the permit conditions;

(4) a statement that the proposed regular permit will become final with respect to any application unless the proposed permit is timely contested; and

(5) a statement that any applicant for a regular permit may contest a proposed regular permit by filing with the docket clerk, on or before the 60th day after the publication of notice of the summary of the proposed regular permits and of the technical summary in the Texas Register, a written and verified protest in accordance with §707.313 of this title (relating to Requests for Contested Case Hearings).

(c) The docket clerk shall publish notice of the proposed regular permit and technical summary in the *Texas Register* and in three newspapers of general circulation throughout the Authority.

(d) The date of publication shall be on or before the date of publication directed by the docket clerk. In any event, the date of publication shall not be fewer than 30 days after the date of the conclusion of technical review on an application for a regular permit.

§707.263. Notice of Contested Case Hearing.
The docket clerk shall set a time and place for all contested case hearings.

(1) The docket clerk shall give 30 days notice of the time and place of the commencement of the hearings by certified mail to all persons entitled to receive notice by mail.

(2) The docket clerk shall schedule individual contested case hearings for each applicant for a permit.

(3) The board or the judge may continue hearings from time to time and place to place. At the time of continuation, the board or the judge shall state on the record the date, time and place of the subsequent hearing. If unknown at the time of continuation, the board or the judge shall give notice of the date, time and place of the subsequent hearing to all parties on the mailing list.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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Subchapter N. Actions on Applications

31 TAC §§707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.281. Applicability.

This subchapter applies to any application filed with the Authority.

§707.283. Action by the Board Without a Contested Case Hearing.

After the time for filing a hearing request as provided in §707.313(g) of this title (relating to Requests for Contested Case Hearings), the board may act on an application without holding a contested case hearing when:

(1) no timely hearing request has been received;

(2) all timely hearing requests have been withdrawn or denied by the board; or

(3) a judge has remanded the application because of settlement.

§707.285. Issuance of Initial Regular Permits.

(a) The board shall enter an interlocutory order issuing each initial regular permit:

(1) within 30 days after expiration of the time to file requests for a contested case hearing, if no request for a contested case hearing on the proposed permit is filed within the time required after publication of notice of the order proposing issuance of the permit; or

(2) within 90 days after filing of the proposal for decision with the docket clerk.

(b) The board shall issue each initial regular permit within 60 days of issuance of its final proportional adjustment order.

§707.287. Board Actions.

(a) The board may grant or deny an application in whole or in part, suspend the authority to conduct an activity for a specified period of time, dismiss proceedings, amend or modify a permit or order, or take any other appropriate action.

(b) If the board directs a person to perform or refrain from performing any act or activity, the order shall set forth the findings on which the directive is based. The board may set a reasonable compliance deadline in its order in which to:

(1) terminate the operation or activity;

(2) conform to the Edwards Aquifer Act, the Authority's rules or permit requirements, including any new or additional conditions imposed by the board; or

(3) otherwise comply with the board's order.

(c) For good cause, the board may grant an extension of time to a compliance deadline upon application by the person against whom enforcement is taken.

§707.289. Actions by General Manager.

The purpose of this section is to delegate authority to the general manager and to specify applications on which the general manager may take action on behalf of the board for the following actions listed in paragraphs (1)-(8) of this section:

(1) well construction permits;

(2) exempt well determinations;

(3) permit applicability determinations for withdrawals from wells;

(4) well registration approvals and cancellations;

(5) application completeness and compliance determinations;

(6) the nature of an amendment to an application as a substantive or non-substantive amendment;

(7) extensions to well construction permits provided the applicant timely files for an extension before the expiration of the original permit and shows good cause for the extension; and

(8) the granting of applications to amend as a matter of right.

§707.291. Actions by General Manager on Registrations.

The general manager shall review registrations and make a determination on whether a well is not required to obtain a groundwater withdrawal permit or a well construction permit pursuant to §705.11 or §705.13 of this title (relating to Withdrawals Not Requiring a Groundwater Withdrawal Permit and Wells Not Requiring a Well Construction Permit, respectively) and shall inform the registrant of his determination within 30 business days. If the determination is that a well is not required to obtain these permits, the registrant may begin drilling immediately upon receiving written notice of the approved registration.

§707.293. Effective Date of General Manager's Actions.

A permit or other approval is effective when signed by the general manager.

§707.295. Motion for Reconsideration of Actions Taken by General Manager.

(a) The applicant may file with the docket clerk a motion for reconsideration by the general manager of his action.

(b) A motion for reconsideration must be filed no later than 20 days after the signed permit, approval or other written notice of the general manager's action is mailed to the applicant.

(c) An action by the general manager under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the board.

(d) With the agreement of the parties or on their own motion, the board may extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the signed permit, approval or other written notice of the general manager's action is mailed to the applicant.

(e) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the board within 45 days after the date the signed permit approval or other written notice of the general manager's action is mailed to the applicant, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the signed permit, approval or other written notice of the general manager's action is mailed to the applicant.

(f) Section 707.717 of this title (relating to Motion for Rehearing), and the Government Code, §2001.146 regarding motions for rehearing in contested cases, do not apply when a motion for reconsideration is denied by board action or under subsection (e) of this section. No motions for rehearing may be filed.

§707.297. Issuance of Well Construction Permits.

The general manager shall issue a well construction permit for a well upon proper execution of a well construction permit application filed by the applicant with the Authority within 30 days after the general manager determines to grant the application.

§707.299. Emergency Permits.

The executive committee of the board is authorized to issue an emergency permit as soon as practicable after an application is filed without notice or hearing, and without action from the board. The executive committee shall report to the board on any actions it has taken relative to emergency permits. The board may rescind the action of the executive committee only for good cause.

§707.301. Review of General Manager's Actions.

Final actions taken by the general manager relative to matters delegated to the general manager by the board are not subject to contested cases hearings or judicial review. General manager actions may be appealed to the board by filing written notice of appeal with the docket clerk within 30 days after the date of final disposition of a motion for reconsideration of an action taken by the general manager under §707.295 of this title (relating to Motion for Reconsideration of Actions Taken by General Manager).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter O. Requests for Contested Case Hearings

31 TAC §§707.311, 707.313, 707.315, 707.317, 707.319

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361,

which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.311. Applicability.

(a) Except as provided in subsection (b) of this section, this chapter applies to hearing requests regarding any application to issue or amend a regular permit.

(b) This chapter does not apply to hearing requests related to:

(1) applications for term permits;

(2) applications for emergency permits;

(3) exempt well determinations;

(4) determinations that a well withdrawal does not require a permit;

(5) proportional adjustment orders on regular permits;

(6) applications for well construction permit;

(7) applications to amend as a matter of right; or

(8) any action delegated to the general manager by the board.

§707.313. Requests for Contested Case Hearings.

(a) The following may request a contested case hearing under this chapter:

(1) the applicant;

(2) any applicant for a regular permit; or

(3) a permittee holding a regular permit.

(b) A request for a contested case hearing by a person identified in subsection (a) of this section must be in writing and be filed by United States mail, facsimile, or hand delivery with the docket clerk within the time provided by subsection (f) of this section.

(c) A hearing request must substantially comply with the following:

(1) give the name, address and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the protestant's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the protestant's location and distance relative to the point of withdrawal that is the subject of the application and how and why the protestant believes he will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) provide any other information specified in the public notice of application;

(5) identify the specific facts that serve as the foundation for the request,

(6) be verified by an affidavit of the protestant or his agent; and

(7) set forth specific prima facie facts showing that the protestant is affected by a proposed regular permit and that the protestant is reasonably entitled to a hearing.

(d) No protest will be acted upon by the board before the date notice of the summary of proposed regular permit is published in the Texas Register.

(e) A separate request for a contested case hearing must be filed on each application for a regular permit.

(f) A hearing request must be filed with the docket clerk on or before the 60th day following the publication of notice of the proposed regular permit and technical summary in the Texas Register.

§707.315. Hearing Request Processing.

(a) The requirements in this section and §707.317 of this title (relating to Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §707.313(f) of this title (relating to Requests for Contested Case Hearings).

(b) The general manager shall file a statement with the docket clerk indicating that technical review of the application is complete.

(c) After a hearing request is filed and the general manager has filed a statement that technical review of the application is complete, the docket clerk shall process the hearing request by scheduling the hearing request for a board meeting. The docket clerk should schedule the request for a board meeting that will be held approximately 40 days after the later of the following:

(1) the deadline to request a hearing; or

(2) the date the general manager filed the statement that technical review is complete.

(d) The docket clerk shall mail notice to the applicant, general manager and the persons making a timely hearing request at least 30 days before the first meeting at which the board considers the request. The docket clerk shall explain how the person may submit public comment to the board, explain that the board may hold a public meeting, and explain the requirements of this chapter.

(e) The general manager and the applicant may submit written responses to the hearing request no later than 20 days before a board meeting at which the board will evaluate the hearing request. Responses shall be filed with the docket clerk and served on the same day to the general manager, the applicant and any persons filing hearing requests.

(f) The person who filed the hearing request may submit a written reply to a response no later than six days before the scheduled board meeting at which the board will evaluate the hearing request. A reply may also contain additional information responding to the notice by the docket clerk required by subsection (d) of this section. A reply shall be filed with the docket clerk and served on the same day to the general manager, the applicant, and any person filing hearing requests.

(g) The general manager or the applicant may file a request with the docket clerk that the application be sent directly to SOAH for a hearing on the application. If a request is filed under this subsection, the board's scheduled consideration of the hearing request will be canceled.

§707.317. Action on Hearing Request.

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the APA. The board will evaluate the hearing request at the scheduled board meeting, and may:

(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;

(2) determine that a hearing request does not meet the requirements of this subchapter and refer the application to a public meeting to develop public comment before acting on the application;

(3) determine that a hearing request meets the requirements of this subchapter and direct the docket clerk to refer the application to SOAH for a hearing; or

(4) direct the docket clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the board refers the hearing request to SOAH, it shall be processed as a contested case under the APA.

(5) A request for a contested case hearing shall be granted if the request is:

(A) is reasonable;

(B) is supported by competent evidence;

(C) complies with the requirements of §707.313 of this title (relating to Requests for Contested Case Hearings);

(D) is timely filed with the docket clerk; and

(E) is pursuant to a right to hearing authorized by law.

(b) The board may refer an application to SOAH if there is no hearing request complying with this subchapter, if the board determines a hearing would be in the public interest.

(c) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §707.509 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §707.509 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(d) If a hearing request is denied, the procedures contained in §707.717 of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case must be filed no more than 20 days after the date the person or his attorney of record is notified of the board's final decision or order on the application. If the motion is denied under §707.717 and §707.719 of this title (relating to Motion for Rehearing and Decision Final and Appealable, respectively) the board's decision is final and appealable.

§707.319. Determination of Reasonableness of Hearing Request. The reasonableness of a hearing request shall be based on all relevant factors including:

(1) whether the request is based solely on concerns outside of the Authority's jurisdiction;

(2) whether the protestant has alleged prima facie facts that, if true, would reasonably cause material injury to the protestant if the board grants the proposed regular permit; and

(3) for an application to amend, whether the protestant alleges prima facie facts that, if true, would demonstrate that the springflow would be adversely affected, or that a protestant's regular permit would be impaired.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Subchapter P. Contested Case Hearings

General Provisions

31 TAC §§707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201

- §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.401. Applicability and Purpose.

This chapter applies to and provides procedures for all contested case hearings and other hearings held by SOAH.

§707.403. Judges.

(a) The board delegates to SOAH the authority to conduct hearings designated by the board.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the Authority's jurisdiction;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the Authority's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions; and

(15) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

§707.405. Referral to SOAH.

(a) When a case is referred to SOAH, the docket clerk shall:

(1) file with SOAH a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate;

(2) coordinate with SOAH to determine a time and place for hearing;

(3) issue public notice of the hearing as required by law and Authority rules; and

(4) send a copy of the docket clerk's case file to SOAH.

(b) The board shall provide to the judge a list of issues or areas that must be addressed. In addition, the board may identify and provide additional issues or areas that must be addressed to the judge, or may limit issues or areas to be addressed, at any time.

§707.407. Substitution of Judges.

The chief administrative law judge may, for good cause, assign a substitute or additional judge to a proceeding without the necessity of duplicating any duty or function already performed by the previous judge.

§707.409. Representation at Hearing.

(a) A representative of record is one who has appeared in a proceeding or whose name is subscribed to any application, or other pleading or to some agreement of the parties filed in the proceedings. The representative shall be the representative of record until the end of the proceeding unless there is a statement to the contrary appearing in the record.

(b) Not more than one representative for each party shall be heard on any question or in the hearing except upon leave of the judge.

(c) Representatives shall:

(1) observe the letter and spirit of the Texas Lawyer's Creed, as adopted by the Texas Supreme Court, and the State Bar of Texas, Texas Disciplinary Rules of Professional Conduct, including those provisions concerning improper ex parte communications with the board and judges;

(2) advise their clients and witnesses of applicable requirements of conduct and decorum; and

(3) direct all objections, arguments and other comments to the judge and not to other participants.

§707.411. Conduct and Decorum.

(a) Those who attend or participate in hearings should conduct themselves in a manner respectful of the conduct of public business, and conducive to orderly and polite discourse. All those in attendance shall comply with the judge's directions concerning the offer of public comment, and conduct and decorum.

(b) In a hearing before a judge, the judge shall first warn a person violating this section to refrain from the specific conduct in violation. Upon further violation of this section by the same person, the judge may exclude that person from the proceeding for such time and under such conditions as necessary to correct the situation. Violation of this section shall also be sufficient cause for the judge to recess the hearing.

§707.413. Consolidation and Severance of Issues and Parties.

(a) Consolidation. Consistent with notices required by law, the judge may consolidate related cases or claims if consolidation will not prejudice any party and may save time and expense or otherwise benefit the public interest and welfare. With the judge's permission, the general manager may consolidate cases or claims. The board may, when referring matters to SOAH, direct that cases or claims be consolidated for hearing.

(b) Severance. The judge may sever issues in a proceeding or hold special hearings on separate issues if doing so will not prejudice any party and may save time and expense or benefit the public interest and welfare.

§707.415. Ex Parte Communications.

(a) No ex parte communications. Unless required for the disposition of an ex parte matter authorized by law, during the pendency of a contested case either at SOAH or before the board, no party, person or their representatives shall communicate directly or indirectly with any director of the board or the judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

(b) Utilizing special skills of the Authority. The judge may seek the special skills or knowledge of Authority staff in evaluating the evidence in a contested case. The judge shall follow the following procedure.

(1) The judge shall issue an order, copied to all parties, asking the general manager to assign a staff person with expertise who has not participated in the proceeding or in the processing of the matter being considered for potential consultation.

(2) All communications between the designated staff expert and the judge shall be either recorded or in writing, and all such communications submitted to or considered by the judge shall be made available as public records when the proposal for decision is issued.

(3) During the pendency of the case either before the judge or the board, no party, person or their representatives shall communicate directly or indirectly with the designated staff expert assigned to help the judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

§707.417. Burden of Proof.

The burden of proof is on any applicant to establish by convincing evidence that he is entitled to have his application for a permit granted.

§707.419. Audio Recording of Proceedings.

The judge shall record each proceeding on audio cassette tape. Any person may obtain a copy of the tape recording from the judge or, after conclusion of the hearing, may submit a request to the docket clerk accompanied by payment of all reproduction costs.

§707.421. Witness Fees.

(a) A person who is not a party and is compelled to attend any hearing or proceeding or to produce books, records, papers or other objects is entitled to receive mileage reimbursement if the location of the hearing or proceeding is more than 25 miles from the person's place of residence. Reimbursement shall be at the current rate for Authority employees. The person is also entitled to receive a minimum fee of $70 or the amount equal to Authority employees' current maximum travel reimbursement for overnight lodging plus meals, whichever is greater, for each day or part of a day the person is necessarily present as a witness or deponent. This fee shall be paid to the witness or deponent even if overnight lodging is not used, and the fee shall not be prorated for parts of days.

(b) Mileage and fees to which a witness is entitled under this section shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the judge.

§707.423. Transcriptions of Hearings.

(a) Official court reporter. Consistent with its court reporting services agreement, the Authority will provide a certified court reporter to make a verbatim record and transcript of any board meeting, hearing or other proceeding upon the timely request of any person. The court reporter provided by the Authority shall be the official reporter for board proceedings. If the Authority does not provide a court reporter, a party may, at its own expense, furnish a certified court reporter whom the board may designate as the official reporter for the proceeding.

(b) Requests for court reporter services.

(1) A request for a verbatim record or transcript of a proceeding may be submitted at any time, but shall be submitted in writing to the docket clerk or the judge and shall specify: the requester's name, mailing address and daytime telephone number; the name and date of the board proceeding; and a statement of whether a transcript is requested. A request for a transcript of a proceeding already reported may be made directly to the court reporter.

(2) A person requesting a verbatim record without a transcript of a proceeding shall pay the applicable reporting fees in the Authority's court reporting services agreement.

(3) A person requesting a transcript of a proceeding shall pay for at least an original and two copies of the transcript in addition to any applicable reporting fees in accordance with the Authority's court reporting services agreement. The court reporter shall provide the Authority the original and one copy of the transcript free of charge.

(4) Upon his or her own motion, the judge may request a verbatim record and an original and two copies of a transcript of a proceeding.

(5) The judge may require the applicant to pay for the transcript in advance subject to reimbursement from other parties upon assessment of costs.

(c) Cancellation of court reporter services. A person who causes the judge or board to cancel a hearing or meeting for which a verbatim record or transcript has been requested is responsible for paying the court reporter, upon demand, the full daily reporting fee in the Authority's court reporting services agreement unless the cancellation occurs more than 24 hours before the scheduled beginning of the hearing or meeting.

(d) Assessment of reporting and transcription costs.

(1) Upon the timely filed motion of a party or upon its own motion, the board may assess reporting and transcription costs to one or more of the parties participating in the proceeding. The board shall consider the following factors in assessing reporting and transcription costs:

(A) the party who requested the transcript;

(B) the financial ability of the party to pay the costs;

(C) the extent to which the party participated in the hearing;

(D) the relative benefits to the various parties of having a transcript;

(E) the budgetary constraints of a state or federal administrative agency participating in the proceeding; and

(F) any other factor that is relevant to a just and reasonable assessment of costs.

(2) In any proceeding where the assessment of reporting or transcription costs is an issue, the judge shall provide the parties an opportunity to present evidence and argument on the issue. A judge shall include in the proposal for decision a recommendation for the assessment of costs.

(3) The parties may agree upon the division or assessment of reporting and transcription costs. The terms of such an agreement shall be made part of the record of the proceeding.

(e) Payment of reporting or transcription assessment.

(1) Each party assessed a reporting or transcription cost in a board proceeding shall pay the assessment in full within ten days after the board's order is final, as provided by the APA. The assessment shall be paid by check payable to the order of the court reporter firm that reports or transcribes the proceeding, or as otherwise ordered by the board. Payment shall be remitted to the Authority's docket clerk or as otherwise ordered by the board.

(2) If a party fails to pay the assessment under subsection (b) of this section, the board may forward the matter to the Attorney General of Texas for prosecution and collection.

(3) Upon a party's filing a sworn motion showing good cause for failure to pay its assessment under subsection (a) of this section, accompanied by tender of payment of the party's assessment in full, the board may grant an exception to the time within which payment must have been made under subsection (a) of this section, accept the payment and otherwise enforce its assessment.

(f) Sale of transcript copies. The court reporter may sell copies of a transcript of a board proceeding in accordance with the Authority's court reporting services agreement, but the Authority shall not be precluded from complying with the Public Information Act.

§707.425. Withdrawing the Application.

(a) An applicant may file a request to withdraw its application at any time before the proposal for decision is issued.

(b) The judge shall remand the application and request to the board who shall enter an order dismissing the application with prejudice.

§707.427. Form of Pleadings.

(a) All pleadings filed under this chapter should contain:

(1) the name of the party;

(2) the names of all other known parties;

(3) a concise statement of the facts and the law relied upon;

(4) a prayer stating the type of relief, action or order desired;

(5) any other matter required by statute;

(6) a certificate of service; and

(7) the signature of the party or the party's authorized representative.

(b) All pleadings shall include the docket number assigned the case by the docket clerk.

(c) Any pleading may adopt and incorporate, by reference, any part of any document or entry in the official files and records of the agency. Copies of the relevant portions of such documents must be attached to the pleadings.

§707.429. Motions.

(a) A motion, unless made during a hearing, shall be made in writing, shall set forth the relief or order sought and shall be timely filed with the docket clerk. Any reply to the motion shall be timely filed with the docket clerk with copies served on the judge and other parties. Failure to furnish copies may be grounds for withholding consideration of the motion or reply. Motions based on matters that do not appear of record must be supported by affidavit.

(b) Motions made during a hearing shall be stated on record or filed with the judge.

(c) When necessary in the judgment of the judge or board, a hearing will be held to consider any motion.

§707.431. Lost Records and Papers.

When any papers or records in the custody and control of the Authority are lost or destroyed, the parties, with the approval of the board, may agree in writing on a brief statement of the matters contained therein, or any person may at any time supply such lost records or papers as follows.

(1) Any person may make a written sworn motion before the board stating the loss or destruction of such record or papers, accompanied by certified copies of the originals, if obtainable, or by substantially correct copies.

(2) If, upon hearing, the board is satisfied that they are substantially correct copies of the original, an order will be entered substituting such copies for the missing originals.

(3) Such substituted copies will be filed with and constitute a part of the record and have the force and effect of the originals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714973
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Hearing Procedures

31 TAC §§707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

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§707.501. Remand to Board.

At the request of the applicant, a judge shall remand an application to the board if all timely hearing requests have been withdrawn or denied or, if parties have been named, all parties to a contested case reach a settlement so that no facts or issues remain controverted. After remand, the application shall be uncontested, and the applicant is deemed to have agreed to the board action. The docket clerk shall set the application for a board meeting.

§707.503. Procedure Before Preliminary Hearing.

(a) Conference before preliminary hearing.

(1) At the judge's discretion, a conference before hearing may be held at a time and place stated in the notice. If notice of the conference is not given in the notice of public hearing, notice of the conference shall be mailed at least 10 days before the conference or the conference may be held at the public hearing date, time and place stated in the notice of public hearing. If notice of public hearing is required to be published, notice of a conference to be held before the initial public hearing date shall be published at least 10 days before the conference.

(2) Any issue appropriately considered at a preliminary hearing may be considered at a conference.

(b) Record of conference action. As determined by the judge, action taken at the conference shall be reduced to writing and made a part of the record or a statement thereof shall be made on the record at the close of the conference or at the hearing. After a prehearing conference, the judge may make appropriate rulings concerning matters discussed at the conference.

§707.505. Preliminary Hearings.

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the Authority's jurisdiction over the proceeding.

(b) If jurisdiction is established, the judge shall:

(1) accept public commentary and name the parties;

(2) set a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes; and

(3) allow the parties an opportunity for settlement negotiations.

(c) When agreed to by all parties in attendance at the preliminary hearing, the judge may proceed with the evidentiary hearing on the same date of the first preliminary hearing.

(d) One or more preliminary hearings may be held to discuss:

(1) formulating and simplifying issues;

(2) evaluating the necessity or desirability of amending pleadings;

(3) all pending motions;

(4) stipulations;

(5) the procedure at the hearing;

(6) specifying the number and identity of witnesses;

(7) filing and exchanging prepared testimony and exhibits;

(8) scheduling discovery;

(9) setting a schedule for filing, responding to and hearing of dispositive motions; and

(10) other matters that may expedite or facilitate the hearing process.

§707.507. Sanctions.

(a) On the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, a judge may impose sanctions against a party or its representative for:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the proceeding's cost;

(2) abuse of the discovery process in seeking, making or resisting discovery; or

(3) failure to obey an order of the judge or the board.

(b) A sanction imposed under this section may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or of a particular kind by the offending party;

(2) charging all or any part of the expenses of discovery against the offending party or its representatives;

(3) holding that designated facts be considered admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking pleadings or testimony, or both, in whole or part.

§707.509. Designation of Parties.

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. After parties are designated, no other person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed. At the discretion of the judge, persons who are not parties may be permitted to make or file statements, however, such statements shall not be considered by the board or the judge as evidence upon which the final order on an application may be based.

(b) Parties.

(1) The general manager is a party to all Authority proceedings.

(2) The applicant is a party in a hearing on its application.

(3) An applicant for or holder of a regular permit is a party if he filed a request for a contested case hearing that was approved by the board .

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the proceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding. Unless otherwise ordered by the judge, each group of aligned participants shall be considered to be one party for the purposes of §707.513 of this title (relating to Rights of Parties) for all purposes except settlement.

(d) Effect of postponement. If a hearing is postponed for any reason, any person already designated as a party retains party status.

§707.511. Appearance.

(a) Any person may appear at a hearing in person or by authorized representative. A person appearing in a representative capacity may be required to prove his authority.

(b) Except for good cause, the applicant shall appear at the public hearing. Failure to so appear may be grounds for withholding consideration of a matter or for dismissal with prejudice.

(c) An affidavit may be made by either the party or a representative, unless otherwise provided by statute.

§707.513. Rights of Parties.

(a) A party has the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all pleadings, motions, replies, and other filed documents; receive copies of all notices the Authority issues concerning the proceeding to which the person is a party; and, as directed by the judge, otherwise fully participate as a party in the proceeding.

(b) Except in enforcement matters, a person may seek leave to withdraw his or her party status at any time upon written request to the judge or by request stated on the record during a hearing. Party status is not withdrawn unless and until the judge grants the request for leave to withdraw.

§707.515. Order of Presentation.

(a) In all proceedings, the moving party has the right to open and close. Where several matters have been consolidated, the judge will designate who will open and close. The judge will determine at what stage other parties will be permitted to offer evidence and argument. After all parties have completed the presentation of their evidence, the judge may call upon any party for further material or relevant evidence upon any issue.

(b) In a permit hearing, the general manager shall open with a simple statement of his preliminary position on the application and will present the proposed permit including special provisions, if any. The applicant shall then present evidence to meet its burden of proof on the application, followed by other parties and the general manager. In all cases, the applicant shall be allowed a rebuttal. Any party may present a rebuttal case when another party presents evidence that could not have been reasonably anticipated.

§707.517. Continuance.

(a) The judge may continue a hearing from time to time and from place to place. If the time and place for the hearing to reconvene are not announced at the hearing, a notice shall be mailed at a reasonable time to all parties and other persons who, in the opinion of the judge, may be affected by action taken as a result of the hearing.

(b) Motions for continuance shall be in writing or stated on the record and shall be sworn unless the facts alleged therein to show good cause are part of the record of the proceeding.

(c) Upon joint motion of all parties, the judge may continue the hearing to allow the parties to use alternative dispute resolution procedures or to engage in and complete settlement negotiations.

§707.519. Agreements.

Agreements between parties affecting any pending matter must be in writing, signed and filed as a part of the record, or announced at the hearing and entered in the record.

§707.521. Evidence.

(a) General admissibility of evidence.

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The Texas Rules of Civil Evidence, as applied in nonjury civil cases in the district courts of this state, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law.

(2) Testimony will be received only from witnesses called by a party or the judge. The judge may allow or request testimony from any person whose position is not adequately represented by any party, subject to cross-examination by all parties. Such testimony shall only be allowed at the judge's discretion. All parties shall have an opportunity to conduct discovery of such person.

(3) Testimony offered by any witness shall be under oath.

(b) Stipulation. Evidence may be stipulated by agreement of all parties. The judge and the board will determine the weight, if any, to be accorded stipulated evidence.

(c) Prefiled testimony and exhibits. The judge may require or allow parties to prepare their direct testimony in written form if the judge determines that a proceeding will be expedited and that the interests of the parties will not be prejudiced substantially. The judge may require the parties to file and serve their direct testimony and exhibits before the beginning of the hearing. The prepared testimony of a witness upon direct examination, either in narrative or question-and-answer form, may be admitted into evidence as if read

or presented orally upon the witness' being sworn and identifying the same as a true and accurate record of what the testimony would be if given orally. The witness shall be subject to cross-examination, and the prepared testimony shall be subject to objection.

(d) Exhibits.

(1) Exhibits of a documentary character shall not exceed 8 1/2 by 11 inches unless they are folded to the required size. Maps and drawings that are offered as exhibits shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(2) Each exhibit offered shall be tendered for identification and placed in the record. Copies shall be furnished to the judge, each of the parties and the hearings reporter, unless the judge rules otherwise.

(3) If an exhibit has been identified, objected to and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to the exclusion of the exhibit.

(e) Official notice.

(1) The judge may take official notice of all facts judicially cognizable. In addition, the judge may take official notice of any generally recognized facts within the specialized knowledge of the Authority.

(2) The judge shall notify all parties of any material officially noticed, including any memoranda or data prepared by the general manager and relied upon by the board in prior proceedings. All parties shall be afforded an opportunity to contest any material so noticed.

(f) Invoking the "rule." At the request of any party, and subject to the discretion of the judge, witnesses may be placed under "the rule" as provided by, and subject to the conditions of, Texas Rule of Civil Procedure 267, and Texas Rule of Evidence 613.

§707.523. Objections.

Objections shall be timely noted in the record. Formal exception to the ruling of the judge is not necessary to preserve the objecting party's right on appeal.

§707.525. Interlocutory Appeals and Certified Questions.

(a) No interlocutory appeals may be made to the board by a party to a proceeding before a judge.

(b) On a motion by a party or on the judge's own motion, the judge may certify a question to the board. Certified questions may be made at any time during a proceeding, regarding Authority policy, jurisdiction or the imposition of any sanction by the judge that would substantially impair a party's ability to present its case. Policy questions for certification purposes include, but are not limited to:

(1) the board's interpretation of its rules and applicable statutes;

(2) which rules or statutes are applicable to the proceeding; or

(3) whether board policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the judge shall file a request to answer the certified question with the docket clerk and serve copies on the parties. Within five days after the request is filed, parties to the proceeding may file briefs or replies. The docket clerk shall provide copies of the request and any briefs or replies to the board. Upon the request of the board, the request will be scheduled for consideration during a board meeting. The docket clerk shall give the judge and parties notice of the meeting. The judge may abate the hearing until the board answers the certified question, or continue with the hearing if the judge determines that no party will be substantially harmed. If the docket clerk does not receive a request from the board to set the question for consideration within 30 days after filing, the request is denied by operation of law.

§707.527. Oral Argument.

At the conclusion of the hearing, oral argument may be heard upon request of the parties or at the judge's direction. The judge may prescribe reasonable time limits, may require or accept written briefs in lieu of oral arguments and may set a schedule for the submission of written briefs.

§707.529. Submittal of Findings of Fact and Conclusions of Law.

The judge shall request the parties submit proposed findings of fact and conclusions of law separately stated.

§707.531. Summary Dispositions.

(a) Motion. After the preliminary hearing, and up to 21 days before the evidentiary hearing, a party may file a motion for a summary disposition of all or any part of an action. The motion shall state the specific issues upon which the summary disposition is sought and the specific grounds justifying the summary disposition. Except upon leave of the judge, with notice to opposing parties, the motion, any supporting affidavits and any other relevant documentary evidence shall be filed and served at least 21 days before the date set for ruling on the motion.

(b) Written response. Except upon leave of the judge, a party may file and serve a written response, any supporting affidavits and any other relevant documentary evidence at least seven days before the date set for ruling on the motion.

(c) Summary disposition. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show there is no genuine issue as to any material fact, and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.

(d) Testimony. A summary disposition may be based on uncontroverted testimonial evidence of an interested witness or of an expert witness as to subject matter concerning which the judge must be guided solely by the opinion testimony of experts. The evidence must be clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted. No oral testimony shall be received at a hearing on a motion for summary disposition.

(e) Appendices, references and other use of discovery not otherwise on file. Discovery products not on file with the docket clerk may be used as summary disposition evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary disposition proofs:

(1) at least 21 days before the date set for ruling on the motion if such proofs are to be used to support the summary disposition; or

(2) at least seven days before the date set for ruling on the motion if such proofs are to be used to oppose the summary disposition.

(f) Form of affidavits; further testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the judge may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) Argument and ruling on motion. At the discretion of the judge, a hearing may be held, and oral argument may be presented on the motion. The judge may rule on the motion with or without a hearing.

(i) Disposition of motion. If the judge grants a motion for summary disposition on all parts of an action, the judge shall close the hearing and prepare a proposal for decision. If the judge grants a motion for summary disposition on any part of an action the judge shall not take evidence or hear further argument upon that part of the action, and shall enter an order specifying the facts that appear without substantial controversy and directing such further proceedings as are just. Upon the hearing of the application the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(j) Proposal for decision. At the close of the hearing, the judge shall include in the proposal for decision a statement of reasons, findings of fact and conclusions of law in support of any summary disposition rendered.

§707.533. Hearings Management Conference.

(a) Purpose. Hearings on applications for initial regular permits will begin with an initial conference to explain the Authority's jurisdiction to conduct contested case hearings and to provide general information concerning the initial regular permit hearing process.

(b) Question and answer. The Authority will entertain questions of general concern to all parties in the hearing from any person attending the conference.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714974
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Discovery

31 TAC §§707.601, 707.603, 707.605

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

The following sections of Senate Bill 1477 are affected by the proposed new sections: §707.1 - §1.11; §707.3 - §1.08, §1.11; §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31 - §1.11; §707.41 - §§1.11, 1.16, 1.33; §§707.43, 707.45, 707.47 707.49 - §1.11; §707.51 - §1.11, §1.15; §707.53 - §§1.11, 1.15, 1.16; §§707.55, 707.57, 707.59, 707.61 - §1.11; §707.63 - §1.29; §707.65, §707.67 - §1.11; §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91 - §1.11, §1.16; §707.93 - §1.16, §1.33; §707.121 - §§1.11, 1.15, 1.18; §707.131, §707.133 - §1.11, §1.19; §707.151, §707.153 - §1.11, §1.20; §707.161 - §1.11, §1.15; §§707.181, 707.183, 707.185, 707.187, 707.189, 707.191 - §§1.11, 1.14, 1.15; §707.193 - §1.11; §707.201 - §§1.11, 1.15, 1.33; §§707.203, 707.205, 707.207 - §1.11, §1.15; §707.209 - §1.29; §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.407, 707.409, 707.411, 707.413, 707.415, 707.417, 707.419, 707.421, 707.423, 707.425, 707.427, 707.429, 707.431, 707.501, 707.503, 707.505, 707.507, 707.509, 707.511, 707.513, 707.515, 707.517, 707.519, 707.521, 707.523, 707.525, 707.527, 707.529, 707.531, 707.533, 707.601, 707.603, 707.605, 707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, and 707.723 - §1.11.

§707.601. Discovery Generally.

Discovery shall be conducted according to the Texas Rules of Civil Procedure, unless Authority rules provide or the judge orders otherwise. The Rules of Civil Procedure shall be interpreted consistently with this chapter. Drafts of pre-filed testimony are not discoverable.

§707.603. Issuance of Subpoena or Authority to Take Deposition.

(a) Upon proper request by a party, the judge shall issue subpoenas and authority to take depositions according to the APA. A request for issuance shall be filed with the docket clerk, and a copy shall be served on the judge and the parties.

(b) Before seeking issuance of either a subpoena or authority, the requestor shall attempt to secure voluntary appearance of the witness or production of materials. If this is not possible, the requestor shall indicate what circumstances prevent such voluntary appearance or production in the request.

(c) If the requestor and witness sign an Agreement to Waive Fee form, subpoenas and authority may be issued without a witness fee deposit. Only a non-party witness or deponent is entitled to receive this fee.

(d) If the witness fee is not waived, the requestor shall make the witness fee deposit in the appropriate amount as indicated on the forms requesting issuance. This amount is based on an estimate of the

mileage to be traveled to and from the hearing or deposition, if over 25 miles, and days expected to be spent in the hearing or deposition. This deposit should be made payable to the Authority, should be filed with docket clerk and must be made before issuance of the subpoena or authority.

(e) Upon deposit of all necessary monies and completion of all forms, the subpoena or authority shall be issued to the requestor to effect service.

§707.605. Form of Subpoena.

The heading of the subpoena shall be "The State Office of Administrative Hearings." It shall state the style of the hearing, that the hearing is pending before SOAH, the time and place at which the witness is required to appear, and the party at whose insistence the witness is summoned. It shall be signed by the judge, but need not be under the seal of SOAH, and the date of issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which hearing of the docketed matter may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas as provided in Rule 178, Texas Rules of Civil Procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714975
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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Post-hearing Procedures

31 TAC §§707.701, 707.703, 707.705, 707.707, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, 707.723

The new sections are proposed under Senate Bill 1477, §1.11, the Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, §1.11(a), 1993 Texas Session Laws 2353, 2361, which requires the board of directors of the EAA to adopt rules necessary to carry out the EAA's powers and duties, including procedural rules.

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§707.701. Judge's Proposal for Decision.

(a) Judge's proposal for decision. After closing the hearing record, the judge will file a written proposal for decision with the docket clerk within 30 working days and will send a copy by certified mail to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the board by filing a request with the docket clerk. Neither the judge's failure to request an extension, the board's failure to grant the requested extension, nor the judge's failure to file the proposal within the 30-day or extended period shall in any way affect the validity of the judge's proposal for decision or the Authority's jurisdiction, consideration or action relative to the proposal for decision.

(b) Proposal for decision: Adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal, as well as findings of fact and conclusions of law that support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(c) Proposal for decision: Not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the board an order that need not contain findings of fact, conclusions of law or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the board.

§707.703. Waiver of Right to Review Judge's Proposal.

Any party may waive the right to review and comment upon the judge's proposal for decision. The waiver shall be either in writing or stated on the record at the hearing.

§707.705. Pleadings Following Proposal for Decision.

(a) Pleadings. Unless right of review has been waived, any adversely affected party may, within 20 days after the date of issuance of the proposal for decision, file exceptions or briefs. Proposed findings of fact may be filed when permitted or requested by the board. Any replies to exceptions, briefs or proposed findings of fact shall be filed within 30 days after the date of issuance of the proposal for decision.

(b) Change of filing deadlines. On its own motion or at the request of a party, the party requesting a change must file a written request with the docket clerk, and must serve a copy on the judge and the other parties. The request must explain that the party requesting the change has contacted the other parties and whether the request is opposed by any party. The request must include proposed dates (preferably a range of dates) and must indicate whether the judge and the parties agree on the proposed dates.

§707.707. Amending the Proposal for Decision.

The judge may file an amended proposal for decision in response to exceptions, replies or briefs submitted by the parties. The parties are not entitled to file exceptions or briefs in response to the amended proposal for decision but may raise any issues before the board as permitted by the board at the time of oral presentation.

§707.709. Scheduling Board Meeting.

(a) The docket clerk, in coordination with the judge, shall schedule motions by parties requiring board action and the presentation of the proposal for decision. The judge, when transmitting the proposal for decision, shall notify the parties of the date of the board meeting and the deadlines for the filing of exceptions and replies. The board may reschedule the presentation of the proposal for decision. The docket clerk shall send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

(b) Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

§707.711. Oral Presentation Before the Board.

In proceedings where a judge has held a public hearing and has issued a proposal for decision or other report to the board, all oral presentations before the board shall be limited to five minutes each, excluding time for answering questions, unless the chairman establishes other limitations. Before the board meeting, the chairman may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the board.

§707.713. Reopening the Record.

The board, on the motion of any party or on its own motion, may order the judge to reopen the record for further proceedings on specific issues in dispute. The board's order shall include instructions as to the subject matter of further proceedings and the judge's duties in preparing supplemental materials or revised orders based upon those proceedings for the board's adoption.

§707.715. Decision.

(a) Decision. The board shall make its decision upon the expiration of 30 days or later after service of the judge's proposal for decision, unless the parties have waived review. The decision, if adverse to any party, shall include findings of fact and conclusions of law separately stated. If any party has filed proposed findings of fact at the request of the judge, the board will include in its decision a ruling on the proposed findings of fact, unless waived by the party.

(b) Prompt decision. The board's decision will be rendered within 60 days after the date the hearing is finally closed. In a case heard by a judge, a longer period of time may be necessary in order to present the matter to the board for decision. If additional time is likely to be required, that fact shall be announced by the judge at the conclusion of the hearing.

§707.717. Motion for Rehearing.

(a) Filing motion. Except as provided by the Administrative Procedure Act, a motion for rehearing is a prerequisite to appeal. The motion shall be filed with the docket clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the board. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the Authority;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(b) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the docket clerk within 30 days after the date a party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail.

(c) Ruling on motion for rehearing.

(1) The motion for rehearing will be scheduled for consideration during a board meeting. Unless the board extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The board may reopen the hearing to the extent it deems necessary. Thereafter, the board shall render a decision or order as required by this subchapter.

(d) Extension of time limits. With the agreement of the parties or on their own motion, the board may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the decision or order.

(e) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

§707.719. Decision Final and Appealable.

In the absence of a timely motion for rehearing, a decision or order of the board is final on the expiration of the period for filing a motion for rehearing. If a party files a motion for rehearing, a decision or order of the board is final and appealable on the date of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law.

§707.721. Appeal of Final Decision.

(a) Petition. A person affected by a final decision or order of the board may file a petition for judicial review within 30 days after the decision or order is final and appealable. General procedures for appealing an order of the board in contested cases are governed by the APA.

(b) The record. The record in a contested case shall include the following listed in paragraphs (1)-(10 of this subsection:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings on them;

(5) summaries of the results of any conferences held before or during the hearing;

(6) proposed findings, exceptions and briefs;

(7) any decision, opinion or report by the officer presiding at the hearing;

(8) prefiled testimony;

(9) all staff memoranda or data submitted to or considered by the judge or board who are involved in the decision; and

(10) the final order and all interlocutory orders.

§707.723. Costs of Record on Appeal.

A party who appeals a final decision in a contested case shall pay all costs of preparation of the original or a certified copy of the record of the board proceeding that is required to be transmitted to the reviewing court. A charge imposed as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: December 22, 1997
For further information, please call: (210) 222–2204

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter . Appraisal Review Board

34 TAC §9.803

The Comptroller of Public Accounts proposes new §9.803, concerning requirements for appraisal review board records. The new rule replaces 34 TAC §9.5141, concerning the same subject matter, which is being repealed in order that it can be adopted under Title 34, Part I, Chapter 9, Subchapter D. The new rule conforms to current agency practice, is easier to use, and reflects statutory changes resulting from Senate Bill 772, 72nd Legislature, 1991, effective September 1, 1991; Senate Bill 642, 74th Legislature, 1995, effective January 1, 1996; House Bill 2201, 75th Legislature, 1997, effective May 21, 1997; and Senate Bill 841, 75th Legislature, 1997, effective January 1, 1998.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the new rule will be in effect, there will be no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect, the new rule would benefit the public by making the rules easier to use. There is no anticipated significant economic cost to the public. The new rule will have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §41.68, which requires the comptroller to prescribe the form and manner in which the appraisal review board shall keep a record of its proceedings.

The new section implements the Tax Code, §§25.25, 41.44(b), 41.45(d), 41.66, 41.68, 42.06, and 42.08.

§9.803. Requirements for Appraisal Review Board Records.

(a) Each appraisal review board shall establish by rule the procedures for hearings that the board conducts. Such rules shall contain as a minimum the requirements set forth in subsections (b)-(g) of this section.

(b) The following requirements shall be met by appraisal review boards in the conduct of hearings and proceedings, and the record kept by the board shall contain the following items:

(1) names of the board members present and the date of the hearing or proceeding;

(2) the name and resident address of the protesting property owner and that owner's agent, if any, or challenging taxing unit;

(3) a description of the property subject to the protest or challenge;

(4) a summary of the nature of the protest or challenge;

(5) an affidavit signed by each appraisal review board member stating that the member has not communicated with another person concerning:

(A) the evidence, argument, facts, merits, or any other matters related to an owner's protest, except during the hearing on the protest; or

(B) a property that is the subject of the protest, except during a hearing on another protest or other proceeding before the board at which the property is compared to other property or used in a sample of properties.

(6) a summary of the testimony relevant to the issues before the board;

(7) any documentary or physical evidence admitted for consideration by the board or the reference number of the evidence, if applicable;

(8) the names and resident address of every witness and the fact that the witness testified under oath;

(9) a notation of any formal motions made and the ruling thereon;

(10) the final order of the board or a reference to the written order number; and

(11) the date of any final order and the date the notice is placed in the mail.

(c) The chief appraiser or his authorized designee shall be present at all proceedings to represent the appraisal district. If hearing panels are used pursuant to the Tax Code, §41.45(d), then a formal rule should be adopted by the board for that purpose. The rule shall

provide for a due process appeal of any contested matter to the board as a whole.

(d) Should a property owner or taxing unit file a protest or challenge petition after the deadline provided by statute, then good cause for late filing shall be considered only by formal motion.

(e) The board shall deliver by certified mail a notice of the issuance of any final order along with a copy of the order to the property owner or the taxing unit as applicable. Copies of the notice and order shall be furnished to the office of the chief appraiser. A notice of the issuance of a final order determining a protest shall contain the name and address of the chief appraiser and the following statement in uppercase bold lettering: "The appraisal review board has made a final decision on your protest. A copy of the order determining the protest is enclosed with this notice. You have the right to appeal this order to the District Court. If you want to appeal, you should consult an attorney immediately. You must file a petition with the district court within 45 days of the date you receive this notice. If you do appeal and your case is pending, except as provided under Tax Code, §42.08(d), you must pay the lesser of the amount of taxes not in dispute or the amount of taxes due on the property under the order from which the appeal is taken, to each taxing unit before taxes for the year become delinquent."

(f) After filing an oath of inability to pay the taxes at issue, a party may be excused from the requirement to prepayment of tax as a prerequisite to appeal if the court, after notice and hearing, finds that such payment would constitute an unreasonable restraint on the party's right of access to the courts. The reviewing court may set terms and conditions on any grant of relief as may be reasonably required by the circumstances.

(g) A permanent file shall be maintained when an order of the appraisal review board is appealed to district court. This file shall contain:

(1) the notice of appeal with the filing date noted thereon;

(2) copies of notices required by the Tax Code, §42.06(c); and

(3) chief appraiser entries on the appraisal record, as provided for in the Tax Code, §42.06(d).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715011
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463-3699

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Subchapter H. Tax Record Requirements

34 TAC §9.3031

The Comptroller of Public Accounts proposes an amendment to §9.3031, concerning rendition forms. This rule is being amended to add sworn statement language to the model forms for renditions as required by House Bill 1879 and Senate Bill 841, 75th Legislature, 1997, effective September 1, 1997; to clarify that persons required to report inventory through an alternative method are not required to render that property; and to change the form numbers to conform with the comptroller form numbering system.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect, the amendment will have no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect, the amendment would benefit the public by making the rule easier to read. There is no anticipated significant economic cost to the public. The amendment will have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Tax Code, §22.24, which requires the comptroller to prescribe and approve appropriate forms for filing a rendition or report.

The amendment implements the Tax Code, §22.24 and §22.27.

§9.3031. Rendition Forms.

(a) All appraisal offices and all tax offices appraising property for purposes of ad valorem taxation shall prepare and make available forms for the rendering of property, when such rendition is required by the office or by the [~~Texas Property~~] Tax Code.

(b) In the rendition of property required to be rendered by the [~~Texas Property~~] Tax Code or by the chief appraiser, the person rendering property shall use the model form adopted by the Comptroller of Public Accounts [~~State Property Tax Board~~] which is appropriate to the property type and category, use a form containing information which is in substantial compliance with the model form adopted by the comptroller, [~~board,~~] or use any other form appropriate to the property type and category which has been approved by the comptroller [~~board~~].

(c) Nothing in this section shall be construed to prohibit the combination of the information contained on two or more model forms into a single form in order to use a single form to achieve substantial compliance with two or more model forms.

(d) The [~~following~~] model rendition forms for various categories of property are adopted, as amended, by the comptroller [~~State Property Tax Board~~] by reference. Copies of these forms are available for inspection at the offices of the Texas Register or may be obtained [~~free upon request~~] from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. [~~State Property Tax Board, P.O. Box 15900, Austin, Texas 78761. In addition, copies of the forms are available for inspection at the offices of the Texas Register:~~] Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800- 248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. The model rendition forms are:

(1) General Real Estate Rendition of Taxable Property, (Form 50-141) [~~State Property Tax Board Rendition Form V22.01~~];

(2) General Personal Property Rendition of Taxable Property, (Form 50-142)[~~State Property Tax Board Rendition Form V22.02~~];

(3) Report of Leased Personal Property, (Form 50-147) [~~State Property Tax Board Rendition Form V22.03~~];

(4) Report of Leased Space for Storage of Personal Property, (Form 50-148)[State Property Tax Board Rendition Form V22.04];

(5) Industrial Real Property Rendition of Taxable Property, (Form 50-149)[State Property Tax Board Rendition Form V22.06];

(6) Oil and Gas Lease Rendition of Taxable Property, (Form 50-150)[State Property Tax Board Rendition Form V22.07];

(7) Mine and Quarry Real Property Rendition of Taxable Property, (Form 50-151)[State Property Tax Board Rendition Form V22.08];

(8) Telephone Company Rendition of Taxable Property, (Form 50-152)[State Property Tax Board Rendition Form V22.09];

(9) REA-Financed Telephone Company Rendition of Taxable Property, (Form 50- 153)[State Property Tax Board Rendition Form V22.10];

(10) Electric Company and Electric Cooperative Rendition of Taxable Property (Form 50- 154)[State Property Tax Board Rendition Form V22.11];

(11) Gas Distribution Utility Rendition of Taxable Property, (Form 50-155)[State Property Tax Board Rendition Form V22.12];

(12) Railroad Rendition of Taxable Property, (Form 50-156)[State Property Tax Board Rendition Form V22.13];

(13) Pipeline and Right-of-Way Rendition of Taxable Property, (Form 50-157)[State Property Tax Board Rendition Form V22.14];

(14) Business Personal Property Rendition of Taxable Property, (Form 50-144)[State Property Tax Board Rendition Form V22.15];

(15) Watercraft Rendition of Taxable Property, (Form 50-158)[State Property Tax Board Rendition Form V22.16];

(16) Aircraft Rendition of Taxable Property, (Form 50-159)[State Property Tax Board Rendition Form V22.17];

(17) Mobile Homes Rendition of Taxable Property, (Form 50-160)[State Property Tax Board Rendition Form V22.18];

(18) Statement of the Valuation of Rolling Stock (Railroad), (Form 50-137)[Comptroller of Public Accounts Form 30-103];

(19) Statement of Leased Rolling Stock (Railroad), (Form 50-139);[Comptroller of Public Accounts, Form 30-104; and]

(20) Statement of the Valuation of Rolling Stock (Leasing Company), (Form 50-138); and[Comptroller of Public Accounts, Form 30-105.]

(21) Residential Real Property Inventory, (Form 50-143).[Residential Real Property Inventory State Property Tax Board Rendition Form 23.12.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714917
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463–3699

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Subchapter J. Procedures

34 TAC §9.5141

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.5141, concerning appraisal review board record requirement. The rule is being repealed in order to combine the information in this rule into new 34 TAC §9.803. The new rule will make it easier for persons affected by these rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule would have no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that this repeal would benefit the public by making the rules easier to use. There is no anticipated significant economic cost to the public. The repeal will have no significant fiscal impact on small businesses.

Comments on the repeal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeal implements the Government Code, §§25.25, 41.44(b), 41.45(d), 41.66, 41.68, and 42.06.

§9.5141. Appraisal Review Board Record Requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715010
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463-3699

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Part VI. Texas Municipal Retirement System

Chapter 127. Miscellaneous Rules

34 TAC §127.5

The Texas Municipal Retirement System, proposes new §127.5, concerning credited service under the Uniformed Services Employment and Reemployment Rights Act. This new section is being proposed to provide the rights and benefits of an eligible

member under the Texas Municipal Retirement System shall not be less than those rights and benefits provided by the USERRA (Uniformed Services Employment and Reemployment Rights Act)

Pursuant to Government Code §853.506, an eligible member may receive current service credit for service in the uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act (the 'USERRA') (38 U.S.C. §4301 et seq.). Notwithstanding any provision to the contrary, the rights and benefits of an eligible member under the Texas Municipal Retirement System (the 'System') shall not be less than those rights and benefits provided by the USERRA.

Gary W. Anderson, Director, Texas Municipal Retirement System, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the rule.

Comments may be submitted to Gary W. Anderson, Director, Texas Municipal Retirement System, P.O. Box 149153, Austin, Texas 78714-9153.

The new section is proposed under the Government Code, §855.102, which provides the board of trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for effective administration of the System.

The Government Code, §855.102, is affected by the new section.

§127.5. Credited Service Under the Uniformed Services Employment and Reemployment Rights Act.

(a) Definitions:

(1) Eligible Member - An employee of a participating municipality who is or would be considered to be employed in a position eligible for membership but who leaves employment with that municipality to perform service in the uniformed services; whose employer was notified of the obligation or intention of the employee to perform service in the uniformed services; who is released or discharged from such service on or after December 12, 1994 under honorable conditions; whose cumulative period of service in the uniformed services with respect to that participating municipality does not exceed five years not including periods excluded under 38 U.S.C. §1412(c); who applies for reemployment with that participating municipality within 90 days of release or discharge from the uniformed services, or after recovery from an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services (but such recovery period does not exceed two years); and who is reemployed by the participating municipality.

(2) Uniformed Services - The Armed Forces of the United States of America; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

(3) Service in the Uniformed Services - The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which an employee is absent from a position of employment for the purpose of an examination of to determine the fitness of the employee to perform such duty.

(4) Participating Municipality - A municipality as defined in Government Code, §851.001(9) (including entities having the status of a municipality under Government Code, §852.005) that is participating in the Texas Municipal Retirement System at the time the eligible member leaves employment with the municipality to perform service in the uniformed services; or a municipality that is not participating in the System at the time the employee leaves employment with the municipality to perform service in the uniformed services but commences participating during the period of the employee's performance of duty in a uniformed service.

(b) Certification of Eligibility by Participating Municipality. An eligible member will be credited with current service in accordance with the USERRA upon certification by the participating municipality on forms provided by the System:

(1) that the eligible member's reemployment application is timely;

(2) that the eligible member has not exceeded the service limitations set forth in the USERRA;

(3) that the eligible member was not released or discharged from the uniformed service under other than honorable conditions;

(4) the period in which the eligible member performed service in the uniformed services;

(5) that the eligible member did not receive service credit for the period of uniformed service;

(6) the estimated compensation that the eligible member would have received from the municipality but for the period of service in the uniformed services; and

(7) the eligible member's date of reemployment.

(c) Crediting of Current Service under the USERRA.

(1) An eligible member shall be credited with one month of current service credit for each month or part of a month in which:

(A) the eligible member performed service in the uniformed services, and

(B) a person who begins military service prior to the 16th day of a calendar month, or terminates military service after the 15th day of a calendar month is considered to have served a full month, and

(C) the participating municipality participated in the System.

(2) On or before the last day of the fifth calendar year following the year in which the eligible member was reemployed, the eligible member may, but is not required to, deposit with the System any or all employee contributions that would have been deposited to his/her individual account for each period during which he/she performed service in the uniformed services if the eligible member had been employed with the participating municipality during the period of uniformed service. Deposits under this provision are subject to the following rules:

(A) The total deposits may not exceed the amount the eligible member would have been required to contribute had the eligible member remained continuously employed by the participating municipality throughout the period of service in the uniformed services.

(B) The compensation upon which allowable deposits will be calculated is the estimated compensation that the eligible

member would have received from the municipality but for the period of service in the uniformed services.

(C) For purposes of determining the amount of current service credit and allowable monetary credit, months of uniformed service and estimated compensation shall be calculated from the later of the date the eligible member entered uniformed service or the date the participating municipality commenced participation in the System.

(D) Within the allowable period for making deposits and subject to the maximum total amount of deposits, an eligible member may make deposits at any time and in any amount.

(E) Deposits must be paid directly to the System by the eligible member, will be treated as after-tax contributions, and may not be returned until the member terminates from all covered employment in this System.

(F) Deposits will be allocated prospective interest only, and in the same manner as interest is allocated on member contributions to individual accounts.

(G) Deposits, when received by the System, shall be credited to the eligible person's individual account and shall be considered to be contributions attributable to the months of uniformed service performed beginning with the earliest month of uniformed service.

(H) For vesting and funding purposes, current service credit, and any monetary credit arising from voluntary deposits, shall be considered as having been earned through service with the reemploying municipality and as having been credited during the period of uniformed service.

(I) An eligible member receiving service credit for a specific month pursuant to §853.506 may not receive service credit for the same month under any other provision of Subtitle G of Title VIII of the Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714756
Gary W. Anderson
Executive Director
Texas Municipal Retirement System
Earliest possible date of adoption: March 21, 1998
For further information, please call: (512) 476-7577

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Program Services

Subchapter D. Health Care Services

37 TAC §§91.81, 91.85, 91.91, 91.92, 91.95

The Texas Youth Commission (TYC) proposes amendments to §§91.81, 91.91, and 91.95, concerning medical consent, psychopharmacotherapy, and pregnancy and abortion; and (new) §91.85 and §91.92, concerning medical care and psychotropic medication-related emergencies. The amendments to §91.81 and §91.91 will clarify that when psychotropic medication is the required medical intervention in a life threatening situation, in accordance with specific criteria, the medication may be given even if the youth cannot or will not give consent. The amendment to §91.85 will provide for pregnancy testing for female youth committed to TYC and for regular pre-natal and post-natal care for pregnant females. New §91.85 includes basic standards and policy statements with regards to basic medical services, general procedural requirements, limitations of services, and medical discharge. New §91.92 sets forth criteria for administering psychotropic medication in an emergency and establishes restrictions on it use.

Terry Graham, Assistant Deputy Executive Director of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Graham also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more complete description of medical services for TYC youth.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments and new section are proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any medical or psychiatric treatment that is necessary.

The proposed rules implement the Human Resource Code, §61.034.

§91.81. Medical Consent.

(a) (No change.)

(b) Texas Youth Commission (TYC) has the authority to consent to the medical, dental, psychological, and surgical treatment of its youth only when the person having the right to consent (youth's parent or guardian) has been notified and actual objection has not been received by TYC within three days of the receipt of said notice. Notification will occur during the initial admission to the TYC system and will be by mail to the last known address of the person having the right to consent. TYC may use its authority to give consent for youth under [~~in~~] TYC jurisdiction who have not been assigned placement in the home or home substitute.

(c) (No change.)

(d) When a youth reaches age 18, he or she has the right to legally consent to medical treatment. His/her informed consent with respect to treatment for non-life threatening conditions will prevail if there is a conflict between the youth and the parent/guardian and/or TYC.

(e) Emergency Care or Life Threatening Condition. When emergency care is needed or when the condition needing treatment [~~being treated~~] is life threatening and:

(1) the youth is 18 years or older and cannot or will not give informed consent, care will be given.

(2) the youth is under 18 years old, TYC will give its consent for care when TYC has authority to consent, i.e., no objection has been received from the parent or guardian. If TYC has been given notice of objection, TYC staff will, regarding the emergency care, attempt to contact the person having authority to consent ~~regarding the care~~.

(3) the youth is under 18 years old and refuses treatment, care will be given.

(4) regardless of age, psychotropic medication is the required medical intervention, but the youth cannot or will not give consent and all criteria in (GAP)§91.92 of this title (relating to Psychotropic Medication-Related Emergencies) have been met.

(f) Specific Treatment.

(1) (No change.)

(2) TYC may consent to the specific care listed above when a TYC youth under 18 years of age is committed to a facility of the Texas Department of Mental Health and Mental Retardation if the parent or guardian cannot be contacted directly for consent. The TYC medical director in central office may give such consent.

(g) Treatment Other Than Specific Treatment. Though it has the authority to consent to treatment other than that enumerated above, TYC will defer to and attempt to contact the person having authority to consent when such medical treatment may be necessary. If a youth is under 18 years of age and a parent or guardian cannot be contacted, TYC may use its authority to consent to treatment provided the parent or guardian has not given actual notice to the contrary.

§ 91.85. Medical Care.

(a) Purpose. The purpose of this rule is to establish basic standards and policies for delivery of health care services to Texas Youth Commission (TYC) youth.

(b) Explanation of Terms Used. Health Care Professionals-any person who has completed a course of study in a field of health including RN's, physicians, and dentists. The person is usually licensed by a government agency or certified by a professional organization.

(c) Services.

(1) TYC shall provide for professional medical and dental services for its youth in residential care. These services may be provided through contractual arrangements with providers of health care.

(2) Access to licensed health care professionals is available 24 hours a day.

(3) Medical/dental services will be delivered by the facility physician, dentist, psychiatrist, and nurses, directly or indirectly through a contract with a health care provider. The facility physician will act as the local health authority.

(4) All youth in residential care will receive a physical and dental screening and examination upon admission to TYC and annually thereafter.

(5) Youth are provided medical examination and treatment following an injury, following contamination from use of a chemical agent, and following the use of force if indicated.

(6) In facilities housing females, obstetrical, gynecological, family planning, and health education services will be available on site or by referral.

(7) Routine medical complaints:

(A) in institutions, nursing staff respond at the scheduled sick call to be held at least once a day, five days per week. A physician and dentist will provide services at least weekly. The psychiatrist will provide services on campus as agreed in his/her contract; and

(B) in halfway houses and contract facilities, nursing consultation will be available on a daily basis. The physician and dentist will be available to provide services as needed. A psychiatrist will be available to provide services as needed and as agreed in a contract.

(d) General Procedural Requirements.

(1) Facility nurses will, for each TYC youth, develop an individual medical plan which documents current health status and availability of medical insurance.

(2) Youth, who by history or examination, have a chronic or debilitating condition may be placed on medical alert by the responsible physician.

(3) Pharmaceutical procedures will comply with federal and state laws pertaining to the acquisition, storage, administration, and documentation of prescription drugs.

(4) The responsible physician or psychiatrist may authorize medical and pharmacological intervention when required in a life threatening situation consistent with criteria in (GAP)§91.81 of this title (relating to Medical Consent). When this intervention requires the use of psychotropic medication, the authorization must be consistent with criteria in (GAP)§91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

(5) Youth may file grievances related to health care services through the youth complaint procedure.

(6) All efforts are made to utilize third party reimbursement if available.

(7) Facilities housing more than 25 youth must have a central medical room with medical examination facilities.

(e) Limitation of Services.

(1) TYC is not responsible for medical costs incurred by youth:

(A) on furlough or parole status when they are placed in the home of a parent, relative or guardian;

(B) on escape status;

(C) for injuries/illnesses sustained while on escape/abscondence status; or

(D) in detention centers or county facilities.

(2) Pharmaceutical, cosmetic, and medical experiments are prohibited. This policy does not preclude individual treatment of a youth based on his or her need for a specific medical procedure which is not generally available.

(f) Medical Discharge.

(1) In the event a youth suffers an injury or medical illness which requires extended specialized care or which prevents a youth's return to active program participation, the case is reviewed for possible early discharge and referral for outside medical care.

(2) Youth who have a serious medical need and have been determined to be at low risk based on the nature and length of

offense history, may be considered for discharge provided there is a successful referral to an appropriate outside treatment resource.

(3) Facility nurses will, for each TYC youth, develop an individual discharge summary, at release or discharge, that provides recommendations for follow-up care when a youth is released or discharged.

§ 91.91. Psychopharmacotherapy.

(a)-(b) (No change.)

(c) Psychotropic drugs shall not be administered for purposes of punishment or for program management or control. Psychotropic medication may only be prescribed for youth who have had a physical examination by a physician.

(d) Psychotropic medication shall be given only to a youth who has a diagnosed psychiatric disorder. A diagnostic assessment shall be performed by the prescribing physician prior to initiating a psychotropic drug order. Indication for the drug therapy must be documented. Every effort will be made to ensure that prescribing is a collaborative effort between the youth and the clinician, necessitating, whenever reasonable or possible, the sharing of information such as treatment objectives, disadvantages, [~~and~~] available alternatives, and side effects.

(e)-(g) (No change.)

(h) Psychotropic medication may not be administered against the will of a youth except in a medication related emergency as specified in (GAP)§91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

§ 91.92. Psychotropic Medication-Related Emergencies.

(a) Purpose. The purpose of this rule is to establish criteria and procedure for administering a psychotropic drug in a medication-related emergency when a youth cannot or will not give consent for the administration.

(b) Criteria.

(1) Psychotropic medication may be administered to a youth against the will of the youth in a medication-related emergency when the youth cannot or will not give consent if criteria herein are met.

(2) A medication-related emergency is defined as a situation in which it is immediately necessary to administer the medication to prevent harmful behaviors associated with a diagnosed psychiatric condition and to prevent:

(A) imminent and substantial harm to the youth because the youth is overtly engaging in behaviors that could result in serious bodily harm or death; or

(B) imminent physical harm to another because of attempts or acts the youth overtly or continually makes or commits.

(c) Restrictions.

(1) Psychotropic drugs shall not be administered for the purposes of punishment or for program management or control. Pharmaceutical experimentation or research using TYC youth is strictly prohibited.

(2) The use of psychotropic medication in an emergency must be ordered by the responsible physician or facility psychiatrist. Medication for this purpose shall not be authorized through the use of standing orders.

(3) Psychotropic medication may be administered only to a youth who has a diagnosed psychiatric disorder and who has had a physical examination prior to psychotropic medication being prescribed.

(4) Psychotropic medication may be administered in either oral or injectable form.

§91.95. Pregnancy and Abortion.

(a) (No change.)

(b) In recognition of the high-risk nature of adolescent pregnancy and the importance of immediate prenatal care, all female youth receive a pregnancy test on admission to TYC.

(c)[~~(b)~~] The agency shall provide regular prenatal and post-natal care to pregnant youth[~~. committed to the TYC.~~] This care includes medical examinations, appropriate activity levels, safety precautions, and nutrition.

(d)[~~(c)~~] A youth who is committed, recommitted or had parole revoked during pregnancy will be placed appropriate to risk and need as determined by TYC centralized placement.

(e)[~~(d)~~] Therapeutic measures may be required in instances of imminent or inevitable abortion, incomplete abortion, or missed abortion. Surgical procedures may be required to terminate the pregnancy to preserve life of the mother. Termination will be allowed as a therapeutic measure when necessary; however, a written documentation of need must be provided by two physicians. Written documentation may be provided by the facility physician and an obstetrician or family practitioner.

(f)[~~(e)~~] TYC will neither provide funds for nor allow contract medical providers to perform an induced abortion, solely for the purpose of terminating a normal pregnancy, on any female committed to the TYC.

(g)[~~(f)~~] Upon request, TYC personnel may direct a youth requesting abortion services to available resources. The youth or youth's parent/guardian will be responsible for arranging appointments and paying for all services related to the abortion.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714925
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 424-6244

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37 TAC §91.85

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §91.85, concerning medical care. This section is being repealed to allow for the adoption of a new replacement section.

Terry Graham, Assistant Deputy Executive Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be adoption of an updated rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

§91.85. Medical Care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

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Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 424-6244

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Chapter 111. Contracting for Services other than Youth Services

37 TAC §111.1, §111.7

The Texas Youth Commission (TYC) proposes amendments to §111.1 and §111.7, concerning contracting for services, and professional and consultant contracts. The amendments will change the approval requirements for consultant contracts in accordance with changes to the statutes enacted by the 75th Legislature.

Terry Graham, Assistant Deputy Executive Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient use of human resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt policies and make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§111.1. Contracting for Services.

(a)-(b) (No change.)

(c) Applicability.

(1) Listed are types of contracts to which this rule applies and references to sections where specific information regarding those types of contracts may be found.

(A) Professional and Consultant Contracts [~~,See (GAP) §111.7 of this title (relating to Professional and Consultant Contracts)~~].

(B) Architect and Engineer Contracts [~~,See (GAP) §111.9 of this title (relating to Architect and Engineer Contracts)~~].

(C) Construction Contracts [~~,See (GAP) §111.11 of this title (relating to Construction Contracts)~~].

(D) Training and Education Contracts [~~,See (GAP) §111.21 of this title (relating to Training and Education Contracts)~~].

(E) Student Intern Contracts [~~,See (GAP) §111.25 of this title (relating to Student Intern Contracts)~~].

(F)-(J) (No change.)

(2)-(3) (No change.)

(d) (No change.)

(e) Contracts for the delivery of services to the Commission must be approved by agency personnel consistent with total annual costs to the Commission.

(1)-(2) (No change.)

(3) Consultant contracts over $15,000 [~~$10,000~~] require the approval of the executive director and the TYC Board.

(f)-(g) (No change.)

(h) Payment shall not be made unless the TYC staff responsible for the contract certifies the receipt of services including: that the services [~~and that~~] have been delivered, are acceptable in quantity and quality, and are in compliance with all contract terms, conditions, specifications and statement of work.

§111.7. Professional and Consultant Contracts.

(a)-(c) (No change.)

(d) Required Approvals.

(1)-(3) (No change.)

(4) Requests for consultant services over $15,000 [~~$10,000~~] require the approval of the executive director and the TYC board.

(5)-(6) (No change.)

(7) All contracts involving the expenditure of funds for outside audit services require approval of the State Auditor's Office.

(8) All contracts involving the expenditure of funds for outside legal services require approval of the Attorney General's Office.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714828
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 424-6244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 46. Licensed Personal Care Facilities Contracting with the Texas Department of Human Services to Provide Residential Care Services

The Texas Department of Human Services (DHS) proposes to amend §46.2005, concerning standards for operation; §46.3001, concerning general bills/claims payment requirements; §46.4005, concerning facility charges for hospital/nursing facility stays; and §46.5001, concerning record requirements, in its Licensed Personal Care Facilities Contracting with the Texas Department of Human Services to Provide Residential Care Services chapter. The purpose of the amendments is to clarify Community Based Alternatives options.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide a better audit trail for monitoring provider performance and enhancing the quality of service for participants. There will be no effect on small businesses as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Sharon Drane at (512) 438-5190 in DHS's Community Based Alternatives program. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-050, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Provider Participation

40 TAC §46.2005

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§46.2005. Standards for Operation.

The facility must:

(1) provide each client with a private or semi-private room (Community Based Alternatives participants have a choice of private or semi-private rooms);

(2)-(10) (No change.)

(11) collect payment from the client according to DHS's copayment and room and board policies. If payment is not made by the 10th day of the month, the facility must send notice to the client and a copy to DHS by the 11th day of the same month;

(12)-(14) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714815
Glen Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 438-3765

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Claims Payment

40 TAC §46.3001

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§46.3001. General Billings/Claims Payment Requirements.

The following are reimbursement requirements.

(1) (No change.)

(2) If the client's copayment amount is less than the bedhold charge, the Texas Department of Human Services pays the difference. This does not apply to Community Based Alternatives (CBA) participants.

(3) The facility must bill [~~the client~~] for the bedhold charge the day the client [~~he~~] enters the hospital/nursing facility. [~~and~~] The facility must bill the full rate for the day the client [~~he~~] returns from the hospital/nursing facility. For CBA participants, the facility must not bill for the date of admission to a hospital or nursing facility.

(4) The facility is entitled to payment for up to 14 days of personal leave taken by the client each calendar year. The CBA participant is responsible for the room and board charge and copayment for personal leave days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714814
Glen Scott

General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 438-3765

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Provider Contracts

40 TAC §46.4005

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§46.4005. Facility Charges for Hospital/Nursing Facility Stays.

[~~Hospital Bedhold Charge.~~] The facility's bedhold charge or the negotiated bedhold charge for reserving a client's space during hospital /nursing facility stays may not exceed the maximum amount established by the Texas Department of Human Services. The maximum amount a facility may charge a Community Based Alternatives participant for reserving space during hospital/nursing facility stays is the daily room and board charge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714817
Glen Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 438-3765

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Records

40 TAC §46.5001

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§46.5001. Record Requirements.

(a)-(b) (No change.)

(c) The facility must ensure that records include written receipts for all payments made to the provider by or for clients.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 6, 1997.

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Glen Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 438-3765

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Chapter 90. Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition

Subchapter A. Introduction

40 TAC §90.2, §90.3

The Texas Department of Human Services (DHS) proposes the repeal of §90.142, concerning construction and initial survey of completed construction; §90.193, concerning arbitration; §90.211, concerning definitions; §90.212, concerning incidents of abuse and neglect reportable by facilities to the Texas Department of Human Services (DHS); §90.301, concerning purpose; §90.302, concerning voluntary certification of facilities for care of persons with Alzheimer's Disease; §90.303, concerning general requirements for a certified facility; §90.304, concerning standards for certified Alzheimer's facilities; and §90.322, concerning interpretive memoranda; amendments to §90.2, concerning scope; §90.3, concerning definitions; §90.11, concerning criteria for licensing; §90.12, concerning building approval; §90.13, concerning applicant disclosure requirements; §90.14, concerning increase in capacity; §90.16, concerning change of ownership; §90.17, concerning criteria for denying a license or renewal of a license; §90.19, concerning license fees; §90.20, concerning time periods for processing license applications; §90.42, concerning standards for facilities for persons with mental retardation or related conditions; §90.60, concerning construction and initial survey of completed construction; §90.61, concerning introduction, application, and general requirements for facilities for persons with mental retardation or related conditions; §90.65, concerning fire alarms, detection systems, and sprinkler systems; §90.66, concerning portable fire extinguishers; §90.68, concerning architectural space planning; §90.191, concerning procedural requirements; §90.192, concerning determinations and actions pursuant to inspections; §90.213, concerning complaint investigation; §90.217, concerning reporting of resident death information; §90.281, concerning generally; §90.282, concerning definitions; §90.283, concerning plan of care; §90.287, concerning licensed capacity; §90.321, concerning investigation of facility employees; and §90.323, concerning procedures for inspection of public records; and new §90.211, concerning definitions; §90.212, concerning incidents of abuse and neglect investigated and reported by facilities to the Texas Department of Human Services (DHS); §90.324, concerning emergency medication kit; and §90.325, concerning controlled substances; in its Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition (ICF-MR/RC) chapter. The purpose of the amendments is to comply with recent state legislation that created a new licensing chapter in the Health and Safety Code, Chapter 252, and to add procedures to be used when conducting an investigation in a private ICF-MR/RC facility. The chapter provides for the development and enforcement of standards for services to individuals residing in ICFMR/RC facilities.

Eric M. Bost, commissioner, has determined that for the first five- year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that ICF-MR providers will have licensing rules separate from nursing home providers and to provide facility investigators with guidelines on conducting abuse and neglect investigations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-034, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

The amendments are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.2. Scope.

(a) The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for persons with mental retardation or a related condition. [~~The provisions of this chapter apply to a facility serving persons with mental retardation or related conditions.~~]

(b) The term "facility serving persons with mental retardation or related conditions," when used in this chapter, means an establishment or home that provides food, shelter, and treatment or services to four or more persons who are unrelated to the owner; is primarily for the diagnosis, treatment, or rehabilitation of persons with mental retardation or related conditions; and provides in a protected setting continuous evaluation, planning, 24-hour supervision, coordination and integration of health or rehabilitative services to help each resident function at the resident's greatest ability. [~~of the establishment and whose physical and mental condition requires institutional care; and that provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, or laundry; or a foster care type residential facility that provides room and board to fewer than five persons who: are not related within the second degree of consanguinity or affinity, as determined under the Texas Government Code, §§573.021 et seq, to the proprietor; and because of their physical or mental limitations, or both, require a level of care and services suitable to their needs that contributes to their health, comfort, and welfare. A foster care type of facility is subject to licensing under the Health and Safety Code, Chapter 242, only if written application is made for participation in the intermediate care program under federal law.~~]

(1)-(2) (No change.)

(c) This chapter does not apply to an establishment that:

(1) provides training, habilitation, rehabilitation or education to individuals with mental retardation or a related condition; is operated under the jurisdiction of a state or federal agency, including the department, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Commission on Alcohol and Drug Abuse, the institution division of the Texas Department of Criminal Justice, or the Veterans' Administration; and, is certified through inspection or evaluation as meeting the standards established by the state or federal agency; or

(2) is conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules.

§90.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions which are specific to the subchapter.

Addition - The addition of floor space to a facility [~~an institution~~].

Administrator - The administrator of a facility [~~an institution~~].

Applicant - A person applying for a license [~~required to be licensed~~] under Health and Safety Code, Chapter 252 [~~242~~].

APA [~~APTRA~~] - The Administrative Procedure [~~and Texas Register~~] Act, Texas Government Code, §2001 [~~Civil Statutes, Article 6252-13a~~].

Attendant personnel - All persons who are responsible for direct and non-nursing services to residents of a facility [~~an institution~~]. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, housekeeping, laundry, and maintenance.

Change of ownership - A change of 50% or more in the ownership of the business organization that is licensed to operate the facility, or a change in the federal tax payer identification number.

Designee - A state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

Facility - A facility serving persons with mental retardation or related conditions licensed under this chapter as described in §90.2 of this title (relating to Scope) and required to be licensed under the Health and Safety Code, Chapter 252 [~~242~~].

Hearing - A contested case hearing held in accordance with the Administrative Procedure [~~and Texas Register~~] Act, Government Code, Chapter 2001, [~~Texas Civil Statutes, Article 6252-13a,~~] and the department's formal hearing procedures adopted in Chapter 79 of this title (relating to Legal Services).

Immediate and serious threat - A situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if residents are not protected effectively from the harm or if the threat is not removed.

Inspection - Any on-site visit to or survey of a facility [~~an institution~~] by the Texas Department of Human Services for the purpose of

inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

Large facility - Facilities with 17 or more resident beds.

Legal guardian - A person who is appointed guardian under §693 of the Probate Code [~~lawfully invested with power and duty to take care of another person and manage the property and rights of that person who is considered incapable of administering his or her own affairs~~].

License - Approval from the Texas Department of Human Services to establish or operate a facility [~~an institution~~].

Person with a disclosable interest - Any person who owns 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 252 [~~242~~]. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

Qualified mental retardation professional - A person who has at least one year of experience working with persons with mental retardation or related conditions.

Qualified surveyor - A member of the survey team who is a qualified mental retardation professional.

[~~Resident - An individual who resides in a facility.~~]

Small facilities - Facilities with 16 or fewer resident beds.

Well-recognized church or religious denomination - An organization which has been granted a tax-exempt status as a religious association from the state or federal government.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715016
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: February 1, 1998
For further information, please call: (512) 438-3765

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Subchapter B. Application Procedures

40 TAC §§90.11-90.14, 90.16, 90.17, 90.19, 90.20

The amendments are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.11. Criteria for Licensing.

(a)-(c) (No change.)

[~~(d) The applicant must provide all information requested on the application form and submit the appropriate fees as prerequisites for the department to conduct a feasibility inspection or plan review, as requested or required.~~]

(d) [~~(e)~~] A license is issued to a facility which meets all requirements of this chapter and is valid for two years. Each license specifies the maximum allowable number of residents to be cared for at any one time.

§90.12. Building Approval.

(a) (No change.)

(b) Local health authority. The following procedures allow the local health authority to provide recommendations to DHS concerning licensure of a facility.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility must provide to DHS a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor must also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. An application for an increase in capacity for a new facility that was not included in the bed plan approved under the Health and Safety Code §533.062 will not be approved by DHS, as outlined under §90.14 of this title (relating to Increase in Capacity).

(2) Increase in capacity. The license holder must request an application for increase in capacity from DHS. DHS provides the license holder with the application form, and DHS notifies the local fire marshal and the local health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder must notify the local health authority and DHS in writing if the facility meets local code requirements. DHS approves the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by DHS prior to the issuance of the license covering the increased capacity after inspection by DHS if standards are met. An application for an increase in capacity that was not included in the bed plan approved under the Health and Safety Code §533.062 will not be approved by DHS, as outlined under §90.14 of this title.

(3)-(4) (No change.)

§90.13. Applicant Disclosure Requirements.

(a)-(b) (No change.)

(c) General information required. An applicant must file with DHS an application which contains:

[~~(1) the name of the applicant and, if an individual, whether the applicant has attained the age of 18 years;~~]

[~~(2) the type of facility;~~]

[~~(3) the location of the facility;~~]

[~~(4) the name of the administrator;~~]

(1) [~~(5)~~] for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds must be disclosed to DHS;

(2) [~~(6)~~] a certificate of good standing issued by the Comptroller of Public Accounts; and

(3) [~~(7)~~] for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership.

~~[(d) Disclosure requirements. Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:]~~

~~[(1) denial or revocation of a license to operate a nursing facility, facility serving persons with mental retardation or related conditions, personal care facility, or similar facility in any state;]~~

~~[(2) federal or state long term care facility sanctions or penalties;]~~

~~[(3) state or federal criminal convictions for any offense that provides a penalty of incarceration;]~~

~~[(4) unsatisfied final judgments;]~~

~~[(5) operation of a facility that has been decertified in any state under Medicare or Medicaid;]~~

~~[(6) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;]~~

~~[(7) eviction involving any property or space used as a facility in any state;]~~

~~[(8) orders from any court restraining or enjoining the applicant, manager, or any person with a controlling interest from operating a facility in any state; or]~~

~~[(9) any of the adverse actions referenced in this subsection taken against the applicant by all relevant licensing and certification agencies in all other states in which the applicant owns, operates, or manages nursing facilities, facilities serving persons with mental retardation or related conditions, personal care facilities, or similar facilities in any state. The applicant must obtain letters or other documentation from those agencies attesting to the adverse actions or the absence of any such adverse actions.]~~

~~[(e) Required ownership and management information for the past two years.]~~

~~[(1) Each applicant for a license to operate a facility must disclose to DHS the name and business address of:]~~

~~[(A) each limited partner and general partner if the applicant is a partnership;]~~

~~[(B) of each director and officer if the applicant is a corporation; and]~~

~~[(C) each person having a beneficial ownership interest of 5.0% or more in the applicant corporation, partnership, or other business entity.]~~

~~[(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of 5.0% or more in any other long term care facility, the applicant must disclose to DHS the relationship, including the name and current or last address of the facility and the date the relationship commenced and, if applicable, the date it was terminated.]~~

~~[(3) If the applicant or licensee is a subsidiary of another organization, the information must include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.]~~

~~[(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership interest of 5.0% or more in the management company must be disclosed to DHS.]~~

~~[(5) The information required by this section must be provided to DHS upon initial application for licensure, and changes in the information must be provided to DHS on an annual basis, except that a licensee must notify DHS within 30 days of any change of the facility's manager or management services.]~~

~~[(f) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.]~~

§90.14. Increase in Capacity.

(a) (No change.)

(b) An application for an increase in beds that was not included in the plan approved under §533.062 of the Health and Safety Code , Plan on Long Term Care for Persons with Mental Retardation, will not be approved by DHS.

(c) (No change.)

§90.16. Change of Ownership.

(a)-(b) (No change.)

(c) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DHS and submit a copy of a certificate of amendment from the Secretary of State's office. On receipt of the certificate of amendment, the current license will be re-issued in the license holder's new name.

§90.17. Criteria for Denying a License or Renewal of a License.

(a)-(e) (No change.)

(f) DHS will not approve as meeting licensing standards new beds or the expansion of a facility serving persons with mental retardation or related conditions that participates in the medical assistance program under Title XIX of the Social Security Act, as provided by the Health and Safety Code, §533.062 [~~§222.042~~], unless[~~:~~]

[~~(1)~~] the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Health and Safety Code, §533.061. [~~; and~~]

~~[(2) the Texas Department of Mental Health and Mental Retardation has approved the beds or the expansion for certification in accordance with Health and Safety Code, §533.065.]~~

(g) If DHS denies an application for a new [~~a~~] license [~~or refuses to issue a renewal of a license~~], the applicant [~~or licensee~~] may request an administrative hearing. If DHS refuses to issue a renewal of a license, the licensee may request an informal reconsideration, as specified in §90.18 of this title (relating to Informal Reconsideration) and an administrative hearing. Administrative hearings will be held in accordance with DHS's formal hearing procedures under §§79.1601-79.1614 of this title (relating to Formal Hearings) and the Administrative Procedures Act (APA), Title 10 of the Texas Government Code, §§2001.051 et seq.

§90.19. License Fees.

(a) (No change.)

(b) Emergency Assistance Fee.

(1) In addition to the licensing and renewal fee collected under the Health and Safety Code, §252.034, DHS may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(2) The fee collected under this section shall be in the amount prescribed by the Health and Safety Code, §242.097(b) and shall be deposited to the credit of the nursing and convalescent home trust fund established under the Health and Safety Code, §242.096.

(3) DHS may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by the Health and Safety Code, §242.096(b).

(4) A court may order DHS to disburse emergency assistance money to a trustee for a facility licensed under this chapter, if the court makes the findings provided by the Health and Safety Code, §242.096(c).

[(b) Trust fund fee.]

[(1) In addition to the basic license fee described in subsection (a) of this section, DHS has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D.]

[(2) DHS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapters 242, and 247, each calendar year if the amount of the nursing and convalescent trust fund is less than $100,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide $100,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.]

(c) (No change.)

§90.20. Time Periods for Processing License Applications.

(a)-(d) (No change.)

(e) A license will be issued or denied within 30 days of the receipt of a complete application or within 30 days prior to the expiration date of the license. However, DHS may delay action on an application for renewal of a license for up to six months if the facility is subject to a proposed or pending licensure termination action on or within 30 days prior to the expiration date of the license. The issuance of the license constitutes DHS's official written notice to the facility of the acceptance and filing of the application.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Glenn Scott
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Texas Department of Human Services
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Subchapter C. Standards for Licensure

40 TAC §90.42

The amendment is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendment implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.42. Standards for Facilities for Persons with Mental Retardation or Related Conditions.

(a)-(b) (No change.)

(c) Standards. Each facility serving persons with mental retardation or related conditions shall comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations, Part 483, Subpart *I* [D], §§483.400-483.480, titled, "Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded."

(d) (No change.)

(e) Additional requirements.

(1) The facility must develop and implement policies and procedures regarding injuries, accidents, and unusual incidents which involve or affect residents. These policies and procedures must include the following provisions.

(A) An investigation and report must be completed and maintained as a separate record which describes the circumstances of the injury, accident, or incident and its cause, the results of the investigation, and recommended actions. Serious injuries, accidents, or unusual incidents must be reported to the resident's responsible parties and to the department[.], as described in §90.212 of this title (relating to Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Human Services (DHS).

[(B) Allegations of abuse, neglect, or other mistreatment of residents must be reported to the Texas Department of Human Services, PASARR/ICF-MR/RC Department, Long Term Care - Regulatory, at (512) 834-6671, during normal workday hours. Incidents occurring after 5:00 p.m. on weekends and holidays are reported by calling 1-800-292-2065.]

(B) [(C)] The provider or facility must conduct a criminal history check, as outlined in §90.321 of this title (relating to Investigation of Facility Employees), in compliance [In the area of criminal history checks, the provider or facility must comply] with the Health and Safety Code, Title 4, Chapter 250, which requires DHS to perform criminal history checks on persons employed by certain types of facilities.

(2) In the area of cardiopulmonary resuscitation (CPR), at least one staff person per shift and on duty must be certified in CPR.

(3) [(2)] In the area of behavior management, seclusion of residents may not be used. Seclusion is defined as placement of a resident in a room without staff present from which egress is prevented by a locked door.

(4) [~~(3)~~] In the area of physical restraints, the following applies.

(A) When physical restraints (mechanical and/or manual) are used as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied, a physician must participate on the interdisciplinary team that authorizes the use of restraint and must concur with the team's decision concerning its use.

(B) When physical restraints are used as an emergency measure to protect the resident or others from injury, a physician must authorize its use or the extension of its use.

(5) [~~(4)~~] In the area of pharmacy services, the following applies.

(A) All pharmacy services must comply with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered in writing by a physician, dentist, or podiatrist. Verbal orders may be taken only by a licensed nurse, pharmacist, or another physician, and must be immediately transcribed and signed by the individual taking the order. Verbal orders must be signed by the physician, dentist, or podiatrist within seven working days.

(C) The facility, with input from the consultant pharmacist and physician, must develop and implement policies and procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re- order.

(6) [~~(5)~~] Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes, etc.) must be given in accordance with physician's orders by a registered or licensed nurse. Proper technique must be utilized when giving nutritional support.

(7) [~~(6)~~] In the area of administration of medication, the following applies.

(A) Medications may be administered only by physicians, licensed nursing personnel, permitted medication aides, or persons who are exempt from licensure or permit requirements pursuant to the Health and Safety Code, §242.1511. These persons must function in accordance with the memorandum of understanding (MOU) between DHS and the Board of Nurse Examiners. DHS adopts the MOU by reference and copies are available for review at DHS's Long-Term Care Regulatory, 8407 Wall Street, Austin, Texas 78754.

(i) The licensed or certified individual who removes the medication dose from the container in which it was dispensed must administer the dose.

(ii) The individual who administers the medication must record the dose after it is administered and during the shift in which it was given.

(B) Residents who have demonstrated the competency for self-administration of medications must have access to and maintain their own medications. They must have an individual storage space that permits them to store their medications under lock and key.

(C) Residents may participate in a self-administration of medication habilitation training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication habilitation training program must have training in coordination with and as part of the resident's total active treatment program. The resident's training plan must be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication habilitation program may be conducted by nonlicensed personnel and is not limited to personnel who have completed an approved training program in medication administration.

(D) A facility may maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs, as outlined under §90.324 and §90.325 of this title (relating to Emergency Medication Kit and Controlled Substances).

(8) [~~(7)~~] In the area of communicable diseases, the facility must have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility must report in accordance with Communicable Disease and Prevention Act, Health and Safety Code, Chapter 81, or as specified in 25 TAC §§97.1-97.13 (relating to Control of Communicable Diseases) and 25 TAC §§97.131-97.136 (relating to Sexually Transmitted Diseases) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his duties. The facility must have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control (CDC).

(9) [~~(8)~~] In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A)-(F) of this paragraph apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identified and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

(10) In the area of communication, a facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by a medical doctor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter D. General Requirements for Facility Construction

40 TAC §§90.60, 90.61, 90.65, 90.66, 90.68

The amendments are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.60. Construction and Initial Survey of Completed Construction.

(a)-(b) (No change.)

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility, including additions or remodeled areas, is required to be performed by DHS [~~(architectural section)~~] prior to occupancy. [~~A minimum of three weeks advance notice is needed.~~] The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal, and building inspector.

(2)-(3) (No change.)

(d) (No change.)

§90.61. Introduction, Application, and General Requirements for Facilities for Persons with Mental Retardation or Related Conditions.

(a)-(d) (No change.)

(e) Applicable codes and standards. Facilities must meet the requirements of NFPA 101, 1985 edition, and any other codes and standards of NFPA listed in this section, except as may be otherwise approved or required by DHS.

(1)-(4) (No change.)

(5) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws and regulations: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attention: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(f) (No change.)

§90.65. Fire Alarms, Detection Systems, and Sprinkler Systems.

(a) General. Fire alarms, detection systems, and sprinkler systems shall be as required by National Fire Protection Association (NFPA) 101 Life Safety Code, NFPA 72A Standard for the Installation, Maintenance and Use of Local Protective Signaling Systems, NFPA 13 Standard for the Installation of Sprinkler Systems, or NFPA 13-D Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes, as specified in NFPA 101, Chapter 21 titled "Residential Board and Care Occupancies" and as modified in this section.

(1)-(3) (No change.)

(4) Fire alarm systems shall be installed, maintained, repaired, etc. by an agent having a current certificate of registration with the state fire marshal's office of the Texas Department on Fire Protection [~~Commission on Fire Protection~~], in accordance with the state law. A fire alarm system installation certificate shall be provided as required by the Office of the State Fire Marshal. An exception is that large facilities who have professional engineers on staff that are qualified in electrical and electronic installations are not required to have a certificate of registration with the state fire marshal's office, provided they do not sell, install, or maintain fire alarm systems commercially.

(b) Fire alarm and smoke detection and sprinkler systems for small facilities.

(1) (No change.)

(2) Smoke detectors shall be installed in resident bedrooms, corridors, hallways, and common living/dining areas. Service areas such as laundries and kitchens shall [~~may~~] have heat detectors in lieu of smoke detectors.

(3)-(5) (No change.)

(6) The facility shall have a written contract with a fire alarm company or person licensed by the State Fire Marshall's Office [~~of Texas~~] to maintain the fire alarm system semiannually , and the system will be inspected as specified in the contract.

(7) Facilities classified as "impractical evacuation capability", must be protected by a sprinkler system in compliance with NFPA 13; or NFPA 13D with additional requirements for coverage in all dwelling areas and all closets as specified by NFPA 101, Chapter 21.

(c) Fire alarm and emergency systems for large facilities.

(1)-(8) (No change.)

(9) Partial sprinkler systems (those provided only for hazardous areas) shall be interconnected to the fire alarm system and comply with NFPA 101. Each partial system shall have a valve with a supervisory switch to sound a supervisory [~~trouble~~] signal, water flow switch to activate the fire alarm, and an end of line test drain.

(10)-(11) (No change.)

§90.66. Portable Fire Extinguishers.

(a) (No change.)

(b) Types of extinguishers.

(1) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2 1/2 gallon (pressurized water) for water type or 2-A: 10-B: C (five pound dry chemical) [~~five pound~~] for ABC type.

(2)-(6) (No change.)

§90.68. Architectural Space Planning.

(a) Large facilities.

(1) Ancillary resident space. The minimum total ancillary resident-use space shall be not less than 35 square feet per bed. Ancillary space includes areas for living, dining, recreation, therapy, training, and other such program areas. It does not include bedrooms, passageways, offices, kitchens, laundries, etc. (more than 35 square feet per bed is usually needed in facilities with less than 60 beds). Facilities which have[~~, or anticipate having,~~] large proportions (approximately 65% or greater) of nonambulatory and/or bedfast residents shall provide at least 50 square feet of ancillary space per bed unless otherwise approved by DHS. Areas providing less space than called for in this paragraph cannot be approved except on an individual basis where clearly justified.

(2) Resident bedrooms.

(A)-(D) (No change.)

(E) Each bedroom shall have at least one outside wall with an operable window giving outside exposure. Unless approved otherwise by the department, the window sill of the required window shall be no higher than 44 [~~36~~] inches from the floor and shall be at or above outside grade level. Other window requirements shall be as called for in the National Fire Protection Association (NFPA) 101. The window area for bedrooms shall be equal to at least 10% of the total room floor area.

(F) If a bedroom is below grade level, it must have a window that is usable as a second means of escape by the resident(s) occupying the room. The window shall be no more than 44 [~~36~~] inches (measured to the window sill) above the floor.

(G) (No change.)

(3)-(9) (No change.)

(b) Small facilities.

(1) Bedrooms.

(A)-(D) (No change.)

(E) [~~Unless there is a door in the bedroom leading directly outside to grade level or an outside stair, every~~] Every bedroom shall have at least one outside window that can be readily opened from the inside and provides a clear opening of at least 5.7 square feet (minimum width of 20 inches; minimum height of 24 inches). The bottom of the opening shall be not more than 44 inches above the floor. Minimum dimensions for operable window section are 20 inches wide by 41.2 inches in height, or 24 inches in height by 34.2 inches wide to provide the minimum 5.7 feet of opening. If a bedroom has a second means of escape independent and remote from the primary means of escape, the bedroom shall have a window(s) with clear glass of area not less than 8% of the bedroom floor area. When opened, the window(s) must have an open space of not less than 4% of the bedroom floor area.

(F)-(G) (No change.)

(2)-(8) (No change.)

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40 TAC §90.142

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeal implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.142. Construction and Initial Survey of Completed Construction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter F. Inspections, Surveys, and Visits

40 TAC §90.191, §90.192

The amendments are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human

Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.191. Procedural Requirements.

(a)-(e) (No change.)

(f) Persons authorized to receive advance information on unannounced inspections include:

(1) (No change.)

[~~(2) representatives of the Texas Department on Aging serving as ombudsmen or authorized to attend or participate in inspections;~~]

(2) [~~(3)~~] representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

(3) [~~(4)~~] representatives of DHS whose programs relate to the Medicare/Medicaid long term care program.

(g) DHS will conduct at least two unannounced inspections each licensing period for each institution licensed under Health and Safety Code, Chapter 252 [~~242~~], except as provided for in this subsection.

(1) (No change.)

(2) For at least two unannounced inspections each licensing period, DHS may [~~will~~] invite to the inspections at least one person as a citizen advocate who has an interest in or who is employed by or affiliated with an organization or agency that represents or advocates for persons with mental retardation or a related condition. [~~from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly.~~] DHS will provide to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all DHS protocols. Advocates must provide their own transportation. The schedule of inspections in this category will be arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to DHS upon request.

(1)-(4) (No change.)

(5) Falsification of information contained in client records is prohibited.

(i) (No change.)

(j) During investigation and/or survey inspections, interviews of individuals residing in the facility or staff employed by the facility may be conducted in private without fear of retaliation toward staff or residents.

(k) Facility staff must be available at the facility within 45 minutes of telephone contact by survey staff.

§90.192. Determinations and Actions Pursuant to Inspections.

(a)-(c) (No change.)

(d) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within ten working days of the exit conference, and the facility will have seven [~~ten~~] working days to refute the additional violations [~~reply before the additional violation is made a part of the permanent record~~]. Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §90.193

The repeal is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeal implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.193. Arbitration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

40 TAC §90.211, §90.212

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeals implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.211. Definitions.

§90.212. Incidents of Abuse and Neglect Reportable by Facilities to the Texas Department of Human Services (DHS).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §§90.211-90.213, 90.217

The amendments and new sections are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments and new sections implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.211. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. For purposes of this subchapter, the terms "abuse" and "neglect" are understood to incorporate "abuse of a child" and "neglect of a child."

Abuse - Any of the following actions:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and regulations;

(D) sexual abuse as defined in this section; and

(E) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

Abuse of a child - The following acts or omissions by any person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by the Texas Penal Code, §43.01; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by §43.21 of the Texas Penal Code, §43.21) or pornographic.

Administrator - The director of the facility.

Allegation - A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, neglect, or exploitation.

Child - A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Complaint - An allegation of abuse, neglect, misappropriation of property, or any other allegation of a regulatory violation which is reported by individuals, family members, or any other person.

Confirmed - A finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

Department - Texas Department of Human Services.

Designee - A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities delegated by the administrator.

Exploitation - The illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.

Facility - The management, administrator, or other person involved in the provision of care and services to individuals/clients, also including the physical building.

Frequency - The incidence or extent of the occurrence of an identified situation in the facility. The situation can affect a single individual or multiple individuals.

Immediate and serious threat - A situation or set of circumstances in which a high probability exists that serious harm or injury to individuals could occur at any time or already has occurred and may

occur again if individuals are not protected from harm or the threat is not removed.

Incident - An allegation of abuse or neglect reported by facility staff to the Texas Department of Human Services state office as required by law.

Incitement - To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Misappropriation of property - The taking, secretion (concealing), misapplication, deprivation, transfer or attempted transfer to any person not entitled to receive any property, real or personal, or any other thing of value belonging to or under the legal control of a individual without the effective consent of the individual or other appropriate legal authority or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of an individual.

Neglect - A negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to an individual with mental illness or mental retardation, or which placed an individual with mental illness or mental retardation at risk of physical or emotional injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a person served, the failure to provide adequate nutrition, clothing, or health care to a person served, or the failure to provide a safe environment for a person served, including the failure to maintain adequate numbers of appropriately trained staff.

Neglect of a child - Any of the following:

(A) an act which leaves a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of a child;

(B) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(C) the following acts or omissions by any person:

(i) placing a child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child.

Nonserious physical injury - Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

Person responsible for a child's care, custody, or welfare - A person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by the Texas Family Code, Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school; or

(E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.

Perpetrator - The person who has committed an act of abuse, neglect, or exploitation.

Reporter - The person filing a report of alleged abuse, neglect, or exploitation, whether the victim of alleged abuse, neglect, or exploitation, a third party filing a report on behalf of the alleged victim, or both.

Serious physical injury - An injury determined to be serious by the examining physician. Examples of serious injury may include the following: fracture, dislocation of any joint, internal injury, any contusion larger than two and one half inch in diameter, concussion, second or third degree burns.

Severity - The seriousness of the identified situation; the degree to which a problem compromises residents' health and safety, or fails to achieve the highest practicable level of physical, mental and psychosocial well-being.

Sexual abuse - Any sexual activity, including sexual exploitation as defined in the Texas Penal Code, involving an employee, agent, or contractor and a person served. Sexual activity includes, but is not limited to, kissing with sexual intent, stroking with sexual intent, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee himself/herself or with another person served.

Sexual exploitation - A coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

Sexually transmitted disease - Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another as a result of sexual contact between persons.

Unconfirmed - Term used to describe an allegation of abuse, neglect, or exploitation which is not supported by the preponderance of the evidence.

Unfounded - A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

§90.212. Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Human Services (DHS).

(a) Purpose; duty of facility to investigate. The purpose of this section is to define and prohibit abuse, neglect, and exploitation of any person receiving services from a facility licensed as an Intermediate Care Facility for Persons with Mental Retardation or Related Conditions under the Health and Safety Code, Chapter 252, or facility contractor; and to prescribe procedures that a facility must use in reporting abuse, neglect, and exploitation in conducting its own investigations and in training provided on conducting investigations. The facility must investigate reports of abuse, neglect, and exploitation.

(b) Reporting responsibilities of employees; failure to report.

(1) Any employee who suspects or has knowledge of, or who is involved in an allegation of abuse, neglect, or exploitation, shall make a verbal report to DHS, if possible, but in no case more than one hour after the incident. A facility may require its employees to make a verbal report to the facility administrator, if possible, but no later than one hour after the incident.

(2) Each employee of a facility must sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuses and that the employee understands his rights under the Health and Safety Code §252.132, such as that the employee has a cause of action against a facility, its owner(s), or employees if he is suspended, terminated, disciplined or discriminated against as a result of reporting abuse or neglect of a resident. These statements must be available for inspection by DHS.

(3) If the person making the allegation is not an employee, such as a person receiving services or a guest, staff shall assist the individual in making the report, if necessary.

(4) The facility owner, administrator, designee, or employee of the facility who has cause to believe that the physical or mental health or welfare of a resident has been, or may be adversely affected by abuse or neglect caused by another person, must report the abuse or neglect to the DHS, at 1-800-292-2065, any day or hour. The following incidents, for example, must be reported to DHS's state office, regardless of the time of day: death; missing resident; abuse or neglect allegations; sexual abuse; misappropriation of resident property; accidental injuries or injuries of unknown origin, if there is reason to believe they were the result of abuse or neglect or if they resulted in serious physical injury; and resident-to-resident abuse if a resident is killed, taken to the hospital, or the physician has ordered treatment other than observation when there is a serious injury.

(c) Qualifications of the facility investigator.

(1) The investigator may be an employee of the licensed facility or an independent party who has been trained by an organization that specializes in procedures and techniques for the investigation of abuse and neglect in the area of mental retardation and related conditions.

(2) The investigator cannot be the alleged perpetrator or involved in the allegation of abuse or neglect, the administrator or designee, owner, part owner, legal successor or anyone with a controlling interest in the facility/corporation.

(3) The investigator must receive and provide evidence, upon request, that he received training on investigation procedures. The documentation of the training content and proof of attendance must be maintained in the facility files.

(4) The training must include at a minimum:

(A) definitions and threshold questions regarding what is an investigation, what are facts, what is evidence, evidence and findings of fact and conclusions.

(B) organizing and conducting an investigation–the half life of evidence, assigning responsibility, early stages in an investigation, order of witness interviews and relationship to criminal investigations.

(C) collecting testimonial evidence–identifying witnesses, preparing for an interview, conducting the interview (investigator demeanor), questioning the witness, interviewing uncooperative witnesses and targets and the right to representation.

(D) documentary evidence/taking statements–how to take a statement, special problems in taking statements, and collecting business records.

(E) collecting and preserving physical evidence–injuries, locations in which incidents occur and substances and objects.

(F) drawing conclusions and reporting investigative findings– evaluating evidence and writing investigative reports.

(d) Responsibility of the facility investigator.

(1) Within 24 hours of receipt of an allegation, the investigator will begin to conduct an investigation. The investigator will:

(A) immediately notify the law enforcement agency of any sexual incident, physical abuse that results in an injury, drug diversions, burglary, and theft, for investigation and evidence collection. The investigator will record the date and time of the allegation, name of law enforcement employee contacted, and the police case number;

(B) interview all witnesses, the alleged victim, and the alleged perpetrator as soon as possible after the initial report of the allegation;

(C) obtain a written and signed statement regarding the allegation following each interview. The statement(s) may be written by the investigator, but shall be signed and dated by those giving the statement, if possible, and by the investigator;

(D) ensure that appropriate medical treatment was obtained, if warranted, for the alleged victim and the treatment was documented; and

(E) review and evaluate all physical, circumstantial and direct evidence, in order to determine whether there is sufficient evidence to confirm the allegation, through:

(i) interviews;

(ii) statements;

(iii) physical exam and medical treatment rendered;

(iv) photographs;

(v) diagrams;

(vi) visits to the site of the incident;

(vii) other physical evidence; and

(viii) use experts or consultants as needed.

(2) The investigator will write a report and it will contain the following information:

(A) a brief description of the allegation;

(B) a detailed description of the investigation from its initiation to completion, including date, time, and location of the alleged incident; location of the alleged victim, witnesses, and the suspect; description of injuries to the alleged victim; how the incident was discovered; how the alleged perpetrator was identified; description of any other evidence; and how the evidence was collected and protected;

(C) summary of the evidence;

(D) analysis of the evidence;

(E) determination as to whether the abuse, neglect, or exploitation occurred; and

(F) recommendations regarding corrective actions.

(3) The report should include all witness statements and supporting documentation.

(4) The investigator will provide a copy of the report to the facility administrator or designee.

(5) The administrator or designee will accept or reject the recommendations and document justification in areas of disagreement, which will be attached to the facility investigator's report.

(6) The written investigation report must be sent to DHS no later than the fifth calendar day after the oral report.

(7) If law enforcement was notified, the investigator or administrator or designee will submit the report to the law enforcement agency.

(e) Responsibilities of the facility administrator or designee.

(1) Immediately, but in no case more than one hour, after notification of an allegation of abuse, neglect, or exploitation, the facility administrator or designee shall ensure that adequate medical and psychological care have been provided to the alleged victim, and shall take measures to ensure the safety of the person, including the following actions.

(A) If the accused is an employee, including a contracted provider of service, the facility administrator or designee will determine whether action should be taken regarding the employee, which could include termination of employment, reassigning the employee to non-client contact, or granting the employee leave pending an investigation. An employee accused of client abuse should be immediately separated from contact with residents.

(B) If an allegation involves client to client aggression, the facility administrator or designee will take immediate appropriate action to protect the alleged victim and other residents, such as one- on-one observation of the alleged perpetrator or the alleged victim, or separation.

(C) If the accused is another person who is known but who is neither a staff person or resident, such as a family member or friend, and the alleged incident occurred away from the facility, interdisciplinary team (IDT) and client will address the alleged perpetrator's access to the alleged victim pending an investigation. The restriction and justification shall be documented in the resident's record. The facility administrator or designee will contact the Texas Department of Protective and Regulatory Services at 1-800-252-5400 for investigation, in addition to notifying the local law enforcement agency and DHS.

(D) The facility administrator or designee, with the consent of the alleged victim or his legal guardian, shall immediately, but in no case later than 24 hours after notification of an allegation of abuse, neglect or exploitation, notify the parents, spouse, or other appropriate relative of the alleged victim. If oral contact cannot be made, the administrator will provide notification by certified mail with a return receipt requested.

(E) The facility administrator or designee will ensure that the resident's medical and psychological needs are met immediately and on an ongoing basis.

(2) The facility administrator or designee will notify the facility investigator immediately, but in no case more than one hour after notification of the incident, of the alleged abuse, neglect, or exploitation.

(3) The facility administrator or designee will assist the investigator in whatever way possible to make staff who are relevant to the investigation available in an expeditious manner and ensure all evidence is preserved and safe guarded to protect the chain of evidence.

(f) Confidentiality of the investigative process.

(1) The administrator or designee will advise the resident of the outcome in a language or process which the resident understands and in writing. The legal guardian or parent of a minor and reporter(s) shall be informed in writing of the outcome of the investigation.

(2) The perpetrator will be informed, in writing, of the outcome of the investigation and any disciplinary action.

(g) Facility responsibility.

(1) The facility administrator or designee must ensure that resident rights and protection are upheld at all times.

(2) If resident-to-resident abuse is substantiated, the facility IDT will determine if the victim understands the situation and is able to make informed decisions. If the IDT determines that the victim is unable to make informed decisions, the IDT will determine if the perpetrator's behavior is dangerous and ongoing. If it is determined that the behavior is dangerous and ongoing, the facility will take immediate action to protect all residents in the facility. In addition, the IDT will consider program changes and/or discharge planning for the perpetrator. If the behavior of the perpetrator is not dangerous and ongoing, the IDT will determine what the needs of the perpetrator are, such as behavior program or specialized training, and take appropriate action.

(3) If abuse by an outside person, not facility or contract staff, is substantiated, the facility IDT will determine if the victim is able to make an informed decision regarding any interaction with the perpetrator. If the IDT determines that the client is unable to make informed decisions, the IDT will determine the degree of restrictions on visitation.

(h) Disciplinary action.

(1) The facility administrator or designee will be responsible for taking prompt and proper disciplinary action when a charge of abuse, neglect, or exploitation is confirmed by the investigator.

(2) If a provider continues to employ an employee who has a history of abuse neglect, or exploitation, DHS may impose a sanction of license revocation, denial of license renewal, or civil penalties under Health and Safety Code §252.064.

(3) If anyone is dissatisfied with the investigation, they may contact DHS.

(i) Failure to report. Failure to report and/or conduct investigations in accordance with this section may result in license revocation, denial of license renewal, or civil penalties under Health and Safety Code §252.064.

§90.213. Complaint Investigation.

(a) (No change.)

(b) The department will provide the facility a verbal summary of the complaint without identifying the source of the complaint.

(c) The department's investigations may include all allegations. These are allegations reported by someone other than facility staff and allegations of immediate jeopardy or serious and immediate threat to resident health and safety.

[(b) The facility will be furnished by the department with a notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.]

§90.217. Reporting of Resident Death Information.

(a)-(b) (No change.)

(c) These reports are confidential under the Health and Safety Code, §252.134 [§242.134]; however, licensed facilities must make available historical statistics provided to them by DHS, if requested by the applicants for admission or their representative.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715024
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: February 1, 1998
For further information, please call: (512) 438-3765

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Subchapter J. Respite Care

40 TAC §§90.281-90.283, 90.287

The amendments are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.281. Generally.

A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of mental retardation or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law [an elderly person or a person with a disability], according to a plan of care as provided under the Health and Safety Code, §§252.181-252.186 [§§242.181-242.186].

§90.282. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[Handicapped person - In this subchapter, the term "person with disabilities" is used in place of the term "handicapped person" as that term is used in Chapter 242 of the Health and Safety Code.]

[Person with disabilities - A person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.]

Plan of care - A written description of the [medical] care, training, and treatment needed by a person [or the supervision and nonmedical care needed for an individual] during respite care.

Respite care - The provision by a facility to a person [an individual], for not more than two weeks for each stay in the facility, of room, board, and care at the level ordinarily provided for permanent residents.

§90.283. Plan of care.

(a) The facility [institution] and the person arranging the care must agree on the plan of care and the plan must be filed at the facility [institution] before the facility [institution] admits the person for the care.

(b) (No change.)

(c) The facility [institution] may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. After each admission, the facility shall review and update the plan of care. During that period, the facility [institution] may admit the person as frequently as is needed and as accommodations are available.

(d) (No change.)

§90.287. Licensed Capacity.

When a facility provides respite care:

(1) (No change.)

(2) any required staff [nurse] to resident ratio will include any individual receiving respite care services regardless of the number of hours in the facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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Subchapter K. Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders

40 TAC §§90.301-90.304

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices

of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeals implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.301. Purpose.

§90.302. Voluntary Certification of Facilities for Care of Persons With Alzheimer's Disease.

§90.303. General Requirements for a Certified Facility.

§90.304. Standards for Certified Alzheimer's Facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Department of Human Services
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Subchapter L. Provisions Applicable to Facilities Generally

40 TAC §90.322

The repeal is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeal implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.322. Interpretive Memoranda.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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40 TAC §§90.321, 90.323-90.325

The amendments and new sections are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments and new sections implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.321. Investigation of Facility Employees.

Each facility shall comply with the provisions of the Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities) [~~Human Resources Code, Title 6, Chapter 106 (relating to Criminal History Checks of Employees in Certain Facilities Serving the Elderly or Disabled)~~].

§90.323. Procedures for Inspection of Public Records.

(a)-(d) (No change.)

(e) Records maintained by Long Term Care-Regulatory are open to the public, with the following exceptions:

(1) (No change.)

(2) all reports, records, and working papers used or developed by DHS in an investigation of reports of abuse and neglect are confidential, and may be released to the public only as follows:

(A) (No change.)

(B) if DHS receives written authorization from a facility resident or the resident's legal representative regarding an investigation of abuse or neglect involving that resident, DHS will release the completed investigation report without removing the resident's name. The authorization must:

(i) be signed and dated with six months of the request or state a length of time the authorization is valid;

(ii) detail the information to be released;

(iii) identify to whom the information can be released; and

(iv) release DHS from all liability for complying with the authorization.

[~~(B) the reporter and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect, whether DHS concluded that abuse or neglect occurred or did not occur;~~]

(3)-(8) (No change.)

(f) (No change.)

§90.324. Emergency Medication Kit.

Stocks of inventoried emergency dangerous drugs may be kept in facilities.

(1) The contents of the emergency dangerous drug kit will be determined by the consultant pharmacist, medical director, and the director of nurses.

(2) Ownership of the emergency drugs is limited to a physician with the exception of controlled substances which are the property of a pharmacy or a physician.

(3) The facility must develop policies and procedures for the emergency dangerous drug kit that include the following:

(A) a requirement that the facility is responsible for proper control and accountability for emergency kits within the facility. A prescription number and balance verifiable by inventory of controlled substances at every shift change in accordance with current standards of practice also must be included.

(B) a signed agreement for obtaining controlled, dangerous drugs must be readily available.

(C) a limitation of the type and quantity of controlled substances, as follows:

(i) the controlled drugs must be limited to injectable unit of use in dosage strengths generally recommended for single dose therapy;

(ii) analgesic controlled drugs must be limited to no more that three different drugs with a maximum total of six doses;

(iii) anticonvulsant controlled drugs must be limited to no more than two different drugs with a maximum total of six doses; and

(iv) controlled drugs selected by the facility must not exceed a total of ten doses for the overall quantity maintained by the facilities.

§90.325. Controlled Substances.

The facility must adhere to the following procedures governing the use of drugs covered by the Controlled Substances Act.

(1) A separate record must be maintained for each drug covered by Schedules II, III, and IV of the Controlled Substances Act, Health and Safety Code, Chapter 481.

(2) The record for each drug must contain the prescription number, name, and strength of drug, date received by the facility, date and time administered, name of resident, dose physician's name signature of person administering dose, and original amount dispensed with the balance verifiable by drug inventory at every shift change.

(3) Schedule V drugs are exempt from the requirements in paragraphs (1) and (2) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

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Part II. Texas Rehabilitation Commission

Chapter 109. Developmental Disabilities Program

40 TAC §109.7

The Texas Rehabilitation Commission proposes new §109.7, concerning the developmental disabilities program. The section is being proposed to add a new rule to Chapter 109, regarding the Traumatic Brain Injury Advisory Board. The new rule will implement the requirements of the Traumatic Brain Injury Act of 1996, Public Law 104-166, 41 United States Code, §300d-52.

Section 109.7 was adopted on an emergency basis in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9187). The Texas Rehabilitation Commission is proposing the rule with a slight change. Subsection (f)is being added to incorporate the duration of the board.

Charles Schiesser, Chief of Staff, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Schiesser also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clear and concise information concerning the Traumatic Brain Injury Advisory Board. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Simon Y. Rodriguez, General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

For further information, contact Roger Webb, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new rule is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023 which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

Texas House Bill 1, 75th Legislature, Revised Statutes (1997)is affected by the proposal.

§109.7. Traumatic Brain Injury Advisory Board.

(a) Legal basis. The Traumatic Brain Injury Advisory Board is created pursuant to the Traumatic Brain Injury Act of 1996, Public Law 104-166, 41 United States Code, §300d-52, and Texas House Bill 1, 75th Legislature, Regular Session (1997). Federal law requires that the state establish an Advisory Board in order to receive grants to carry out demonstration projects to improve access to health and other services regarding traumatic brain injury.

(b) Purpose. The Traumatic Brain Injury Advisory Board is established at the request of the governor jointly by the Texas Planning Council for Developmental Disabilities and the Texas Rehabilitation Commission. The board shall advise and make recommendations to the state on ways to improve services coordination regarding traumatic brain injury.

(c) Tasks. The Advisory Board shall assess the service and support needs of individuals with traumatic brain injuries and their families, analyze the existing public and private resources available to address those needs, and develop recommendations to the state for a comprehensive system of services and supports for individuals with traumatic brain injuries. The Advisory Board shall encourage citizen participation in its activities through various outreach activities, and shall consult with federal, state, and local government entities and with citizen groups and other private entities in developing its recommendations.

(d) Reports. The Traumatic Brain Injury Advisory Board shall make reports as necessary to publicize its recommendations and otherwise as required by law.

(e) Funding. The board is funded with federal and state funds, and with other funds donated by private and public sources.

(f) Duration of board. The board will be abolished on December 31, 2005.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714934
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 424–4050

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Chapter 116. Advisory Committees/Councils

40 TAC §§116.2–116.10

The Texas Rehabilitation Commission proposes amendments to §§116.2 - 116.9 and new §116.10, concerning advisory committees/councils. The amendments are proposed to add a new subsection (f), which is pursuant to Texas Government Code §2110.008(a). New §116.10 is proposed to enable Texas Administrative Code users to find all of the Texas Rehabilitation Advisory Boards, Councils and Committees in one chapter.

Charles Schiesser, Chief of Staff, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Schiesser also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a clear understanding regarding the duration of the councils and committees. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Simon Y. Rodriguez, General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

For further information, contact Roger Darley, Deputy General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendments and new rule are proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023 which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statutes, articles or codes are affected by the proposal.

§116.2. Rehabilitation Advisory Council.

(a)-(e) (No change.)

(f) Duration of council. The council will be abolished on December 31, 2005.

§116.3. Statewide Independent Living Council.

(a)-(e) (No change).

(f) Duration of council. The council will be abolished on December 31, 2005.

§116.4. Medical Consultation Advisory Committee.

(a)-(e) (No change.)

(f) Duration of committee. The committee will be abolished on December 31, 2005.

§116.5. Community Rehabilitation Programs Advisory Committee.

(a)-(e) (No change.)

(f) Duration of committee. The committee will be abolished on December 31, 2005.

§116.6. Increased Client Choice Advisory Committee.

(a)-(e) (No change.)

(f) Duration of committee. The committee will be abolished on December 31, 2005.

§116.7. Regional Consumer Advisory Committee.

(a)-(e) (No change.)

(f) Duration of committee. The committee will be abolished on December 31, 2005.

§116.8. Comprehensive Rehabilitation Advisory Committee.

(a)-(e) (No change.)

(f) Duration of committee. The committee will be abolished on December 31, 2005.

§116.9. Deaf-Blind Advisory Committee.

(a)-(e) (No change.)

(f) Duration of committee. The committee will be abolished on December 31, 2005.

§116.10. Traumatic Brain Injury Advisory Board.

Rules relating to the Traumatic Brain Injury Advisory Board are set forth in §109.7 of this title (relating to Traumatic Brain Injury Advisory Board).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714935
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 424–4050

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 141. General Provisions

40 TAC §§141.1–141.6, 141.8–141.14, 141.31, 141.33, 141.34, 141.41, 141.51, 141.61

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§141.1-141.6, 141.8-141.14, 141.31, 141.33,

141.34, 141.41, 141.51, and 141.61, concerning general provisions related to the commission. These sections describe the origin of the commission, commission composition and officers, the purpose of the commission, authority to accept funds, organization for chemical dependency services, relation to other agencies and endorsements, advisory councils, commission meetings, public comment and requests, minutes and recordings, commissioner travel and expense reimbursement, signature authority, historically underutilized business programs, approval of budgets and receipt of funds, policies of the commission, commission records, nondiscrimination in employment and funding, and general authority to accept donations. Related terms are also defined. The repeal is to eliminate redundant rules that reiterate statutory provisions and rules that do not reflect current practice. The repeal also allows reorganization of the remaining provisions of this chapter.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of the proposed repeal.

Ms. Bleier also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated will be the elimination of redundant rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The repealed sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

§ 141.1. Origin of the Commission.

§141.2. Commission Composition and Officers.

§141.3. Purpose of the Commission.

§141.4. Authority to Accept Funds.

§141.5. Organization for Chemical Dependency Services.

§141.6. Relation to Other Agencies and Endorsements.

§141.8. Advisory Councils.

§141.9. Commission Meetings.

§141.10. Public Comment and Requests.

§141.11. Minutes and Recordings.

§141.12. Commissioner Travel and Expense Reimbursement.

§141.13. Signature Authority.

§141.14. Historically Underutilized Business Programs (HUB).

§141.31. Approval of Budgets and Receipt of Funds.

§141.33. Policies of the Commission.

§141.34. Commission Records.

§141.41. Definitions.

§141.51. Nondiscrimination in Employment and Funding.

§141.61. General Authority to Accept Donations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714647
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

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40 TAC §§141.11, 141.21, 141.31

The Texas Commission on Alcohol and Drug Abuse proposes new §§141.11, 141.21, and 141.31, concerning public comment, advisory councils, and approval authority. The new sections describe provisions for public comment at commission meetings, establish Regional Advisory Consortia and the Multicultural Affairs Advisory Council, and specify signature authority and budget approval authority. These rules are proposed to update current provisions proposed for repeal.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the new sections.

Ms. Bleier also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be improved understanding of mechanisms for public advice and input. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The new sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new sections is the Texas Health and Safety Code, Chapter 461.

§141.11. Public Comment and Requests.

At its meetings, the board shall receive public comment from any person on any issue which is not otherwise provided for by rule or procedure. The board may limit public comment to five minutes per person. The commission shall maintain a list of visitors attending meetings.

§141.21. Advisory Councils.

(a) Regional Advisory Consortia.

(1) Regional Advisory Consortia established. The commission establishes a Regional Advisory Consortium (RAC) in each Health and Human Services Commission (HHSC) region to serve as the link between local communities and the commission and to assist the commission in determining and addressing substance abuse

prevention and treatment service needs in each region. Each RAC consists of no more than 15 individuals recommended by the RAC and approved by the commission. Members serve for three-year terms and include providers and representatives from the community.

(2) Commission role. The commission's governing board approves the bylaws for RACs which include criteria for membership. Community network staff serve as a liaison between the commission and the RAC, and coordinate and support the activities of the RAC.

(3) Compensation. RAC members shall not receive compensation for their services or any other acts as members of the RAC.

(4) Responsibilities. The purpose of the RAC is to establish a viable partnership between service providers, local communities, and the commission and to assist the commission in determining and addressing regional substance abuse prevention and treatment needs. The RAC may adopt procedures appropriate to RAC functions and consistent with the statutes, rules, and policies of the commission.

(b) Multicultural Affairs Advisory Council.

(1) Multicultural Affairs Advisory Council established. The commission establishes a Multicultural Affairs Advisory Council (MAAC) to assist in finding solutions to the problems in establishing a barrier-free service delivery system for ethnics of color. The MAAC consists of 23 members appointed by the board who serve for three-year terms. Members are individuals who identify themselves as ethnics of color and/or minorities and include treatment providers, prevention providers, and other individuals knowledgeable of issues associated with substance abuse.

(2) Commission role. The board approves nominations for membership. Community network staff coordinate and support the MAAC's activities.

(3) Responsibilities. The purpose of the MAAC is to ensure that sensitivity to culture and ethnicity is universally recognized as a major contributor in developing and implementing services. The goal is to establish a barrier-free service delivery system for ethnics of color.

(4) Rules of procedure. The MAAC adopts procedures appropriate to MAAC functions and consistent with the statutes, rules, and policies of the commission.

§141.31. Approval Authority.

(a) The executive director and the executive director's designees shall have authority to enter into contracts or approve vouchers for payment from funds appropriated to the commission.

(b) The board shall approve budget requests to be submitted to the legislature and shall approve the agency's budget of appropriated funds and funds from other sources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714649
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

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Chapter 148. Facility Licensure

Subchapter A. Licensure Information

General Provisions

40 TAC §148.3

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.3, concerning sites and services. These rules describe licensure of multiple sites. The amendment adds reference to the required approval letter and removes the requirement for levels of service to be printed on the licensure certificate. The term trainee is replaced by intern. The amendment is proposed to simplify the licensure process and maintain consistency with terminology used in Chapter 150 of this title (relating to Counselor Licensure).

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule is a simplified licensure process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.3. Sites and Services.

(a) The facility shall have a licensure certificate and approval letter for each site it operates [~~showing the level(s) of service the facility is authorized to provide~~].

(b) A facility shall have written approval from the commission before accepting court commitments [~~A facility that has received commission approval to provide a specific level of service may provide that service at any of its licensed sites or through extension services~~].

(c) A facility that has received commission approval to provide a specific level of service (or category of court commitment approval) may provide that service at any of its licensed sites or through registered extension services [~~A licensed facility shall have written approval from the commission before accepting court commitments~~].

(d) (No change.)

(e) The provider shall have written approval from the commission as a practicum provider before providing practicum supervision for counselor interns [~~trainees~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6609

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Licensure Procedures

40 TAC §148.26

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.26, concerning inactive status and closure. These rules describe requirements related to the suspension of services on a temporary and permanent basis. The amendment applies the requirements regarding inactive status to facilities who are forced to suspend services by because of external action and specifies that the inactive license expires after six months if the facility does not submit a written request to reactivate the license. Language relating to the sanctions process has been deleted from this section and moved to §148.41 of this title (relating to Sanctions). The amendment is proposed to provide a method for ending inactive status and to better organize the licensure rules.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule is more clearly defined procedures. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.26. Inactive Status and Closure [~~Closing a Treatment Program~~].

(a) Inactive Status. Any facility in which services are suspended [~~that voluntarily suspends services~~] for more than 30 days shall notify the commission with a letter justifying why the commission should not retire the license. [~~If granted, inactive status is limited to six months. The licensee is responsible for all licensure fees and for proper maintenance of client records while on inactive status.~~]

(1) If granted, inactive status is limited to six months. The licensee is responsible for all licensure fees and for proper maintenance of client records while on inactive status.

(2) To return to active status, the facility shall submit a written request to reactivate the license.

(3) If the license is not reactivated, it automatically expires at the end of the six month period.

(b) Closure. The facility shall notify the commission in writing within 30 days when it closes a chemical dependency treatment program.

(1) A license becomes invalid when a program closes and the licensure certificate shall be returned to the commission within 30 days.

(2) When a facility closes, the provider is responsible for properly maintaining client records in compliance with confidentiality regulations.

[~~(c) A license becomes invalid when a program closes and the licensure certificate shall be returned to the commission within 30 days.~~]

[~~(d) Surrender of a license does not interrupt an investigation or sanctions process. Unless the facility is cleared through investigation or hearings, the commission will impose the proposed sanctions. The facility is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved.~~]

[~~(e) When a facility closes, the provider is responsible for properly maintaining client records in compliance with confidentiality regulations.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

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Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6609

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Licensure Sanctions

40 TAC §148.41

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.41, concerning sanctions. These rules describe sanctions that may be placed on a licensed facility. The amendments place final authority for sanctions with the commissioners instead of the executive director, add suspension and reprimand to the list of possible sanctions, and revise the maximum civil penalty. The amendments are proposed to bring rules into compliance with existing statute and to prevent revoked facilities from applying for licensure for a two year period.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule improved public protection through more effective use of sanctions. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.41. Sanctions.

(a) The commission shall [~~commission's executive director may~~] deny, suspend, revoke, or refuse to renew a license , or place on probation a facility whose license has been suspended, or reprimand a facility if an applicant, licensee, owner, member of the governing body, administrator, or clinical staff member of the facility:

(1) has a documented history of client abuse or neglect [~~as determined by the commission's executive director~~]; or

(2) violates [~~fails to comply with~~] any provision of the Act or other applicable statute, or [~~with~~] a commission rule.

(b) The commission will determine the length of the probation or suspension. The commission may hold a hearing at any time and revoke the probation or suspension [~~The commission may impose an administrative penalty against a person regulated under the Act who violates authorizing statutes, or a rule or order adopted under the statutes~~].

(c) The commission may impose an administrative penalty against a facility regulated under the Act who violates authorizing statutes, or a rule or order adopted under the statutes [~~A person practicing without a license is subject to a civil penalty of up to $200 for each violation of the Act or these rules. Each day a violation continues or occurs is a separate violation~~].

(d) A facility practicing without a license is subject to a civil penalty of not more than $25,000 for each violation of the Act or these rules. Each day a violation continues or occurs is a separate violation.

(e) Surrender or expiration of a license does not interrupt an investigation or sanctions process. The facility is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved.

(f) A facility whose license has been revoked is not eligible to apply for licensure until two years have passed since that date of revocation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-9714651
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse

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For further information, please call: (512) 349-6609

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Definitions

40 TAC §148.61

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.61, concerning definitions. These rules define the terms used in this chapter. The proposed amendments delete the definitions for approved clinical training institution, counselor trainee, individual counseling, and add definitions for chemical dependency counseling, clinical training institution, extension services, practicum, and religious organization. The amendments also revise the definitions of chemical dependency education, client, counselor intern, direct supervision, life skills training, and qualified credentialed counselor. The amendments are proposed to clarify the meaning of undefined terms, ensure that clients do not provide education or life skills training, and parallel proposed revisions in Chapter 150 of this title (relating to Counselor Licensure).

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be better understanding of terms used in the rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendment is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.61. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

[~~Approved clinical training institution -An individual or legal entity approved by the commission to supervise a counselor trainee who performs counseling, assessments, or interventions. The commission currently recognizes chemical dependency treatment facilities licensed by the commission (or exempt from commission licensure) which are approved as clinical training sites. Other programs or entities requesting this designation must receive approval on a case-by-case basis.~~]

Chemical dependency counseling-Face-to-face interactions between clients and counselors to help clients identify, understand, and resolve issues and problems related to chemical dependency.

Chemical dependency education-A planned, structured presentation of information training, provided by qualified staff (not clients), which is related to chemical dependency. It includes but is[, ~~including but~~] not limited to: physiological and psychological effects, emotional and

social deterioration, rehabilitation and relapse, and risk of acquiring Human Immunodeficiency Virus.

Client-An individual who has been admitted to a chemical dependency treatment facility licensed by the commission and is currently receiving services. [~~A licensed chemical dependency counselor providing chemical dependency services at a facility shall not have a non-professional relationship with any client receiving chemical dependency or related services from the facility for two years after the client is discharged.~~]

Clinical training institution-An individual or legal entity approved by the commission to supervise a counselor intern who performs counseling, assessments, or interventions.

Counselor intern (CI)-A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered [~~an approved~~] clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor.

[~~Counselor trainee-A person working to accumulate the 4,000 hours of supervised work experience required for licensure as a chemical dependency counselor. A trainee receiving compensation for performing assessments, counseling, or treatment interventions shall be designated as a counselor intern by a regionally accredited institution of higher education or an approved clinical training institution.~~]

Direct supervision-Oversight and direction of a counselor intern [~~trainee~~] provided by a qualified credentialed counselor (QCC). If the intern [~~trainee~~] has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern [~~trainee~~] is providing services. If the intern [~~trainee~~] has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone. The qualified credentialed counselor shall:

(A) assume responsibility for the actions of the intern [~~trainee~~] within the scope of the intern's [~~trainee's~~] clinical training;

(B) (No change.)

(C) conduct a complete review of the intern's [~~trainee's~~] written work product at least weekly;

(D) observe the intern [~~trainee~~] providing services to chemical dependency clients at least weekly; and

(E) meet with the intern [~~trainee~~] at least weekly to provide written and verbal feedback and direction.

Extension services-Services provided by a licensed facility at a registered site that is not owned, leased, or operated by the licensed facility.

[~~Individual counseling-A face-to-face interaction between a client and a counselor to help a client identify, understand, and resolve issues and problems related to chemical dependency.~~]

Life Skills Training-A formalized program of training provided by qualified staff (not clients), based upon a written program description, to assist the client in acquiring personal habits, attitudes, values, and social interaction skills that will enable the client to function effectively and/or become gainfully employed. It includes instruction in communication, stress management, problem solving, daily living, and decision making.

Practicum-A 300 hour course of structured clinical training in the 12 core functions required for chemical dependency counselor licensure.

Qualified credentialed counselor (QCC)-A licensed chemical dependency counselor or one of the professionals listed below [~~who can demonstrate two years of chemical dependency counseling experience or one year of chemical dependency counseling experience and 90 clock hours (six semester hours) of chemical dependency training including the 12 core functions from an accredited college or university or an education provider approved by the commission. Documentation shall be available upon request. The following professionals are eligible to serve as QCCs~~]:

(A)-(H) (No change.)

Religious organization-A church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax by being listed as an exempt organization under the Internal Revenue Code (26 United States Code), Section 501(a).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714655
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

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Subchapter B. Facility Management

Personnel and Staff Development

40 TAC §148.119

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.119, concerning clinical training institutions. These rules prohibit a licensed facility from compensating interns unless the facility registers with the commission as a clinical training institution. The amendment removes specific requirements for clinical training institutions, which have been moved to §150.72 of this title (relating to Clinical Training Institutions). The amendment is proposed to avoid redundant rules.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule is elimination of redundant rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules

and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.119. Clinical Training Institutions.

A facility shall not compensate a counselor intern [~~trainee~~] for performing counseling, assessments, or treatment interventions unless the facility is registered with the commission as [~~has received a certificate of registration from the commission to be~~] a clinical training institution as required in §150.72 of this title (relating to Clinical Training Institutions) [~~and the facility has designated the trainee as a counselor intern. To be approved as a clinical training institution, a facility shall apply for approval and have:~~

[~~(1) a written description of the clinical training goals and objectives;~~

[~~(2) a written description of the clinical training experiences and activities;~~

[~~(3) a documented system of direct supervision; and~~

[~~(4) a documented system for evaluating the progress of interns in writing and providing them with appropriate information and guidance~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

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Subchapter C. Client Management

Abuse, Neglect, and Exploitation

40 TAC §148.163

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.163, concerning client labor. These rules describe conditions under which client labor is permitted in licensed facilities. The amendment reorganizes current provisions and adds a provision restricting client access to client records. The amendment is proposed to clarify existing standards and protect client confidentiality.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule is enhanced protection for clients against exploitation and appropriate use of client labor. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendments are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.163. Client Labor.

(a) Clients can be required [~~All clients should be encouraged~~] to maintain their own living quarters and client activity areas if they are physically able to do so. These housekeeping activities and individual/group responsibilities shall be clearly defined in writing.

(b) The facility shall not hire clients to fill staff positions [~~The facility shall not depend on client labor or require clients to work unless:~~]

[~~(1) work responsibilities are defined in writing;~~]

[~~(2) staff explain the work requirements before admission; and~~]

[~~(3) the client gives voluntary written consent~~].

(c) Except for activities permitted in subsection (a) of this section, clients shall be required or allowed to work only when the following conditions are met. [~~The facility shall not allow clients to work for the facility if the job interferes or conflicts with the client's treatment~~].

(1) Work responsibilities (and compensation, if applicable) are defined in writing.

(2) Staff explain the work requirements before admission.

(3) The client gives voluntary written consent.

(4) Work does not interfere or conflict with treatment.

(5) Work does not endanger client safety or well-being.

(6) Work does not involve access to client records.

(7) Work arrangements do not violate client confidentiality.

(8) The facility provides appropriate equipment, supplies, instruction, and assistance.

(d) The facility shall not allow clients to solicit donations or raise funds for the facility. This does not prevent clients from participating in small fund-raising activities when the following conditions are met: [~~The facility shall compensate clients fairly for work unless the activity is clinically designed and justified in the written program description or the client's treatment plan.~~

(1) the activity is completely voluntary;

(2) the activity is conducted in compliance with confidentiality regulations;

(3) clients have direct control of the funds; and

(4) all proceeds are used for the direct benefit of the clients.

[~~(e) Work shall not endanger client safety or well-being.~~]

[~~(f) The facility shall provide appropriate equipment, supplies, and assistance for all housekeeping duties and required work.~~]

[~~(g) The facility shall not allow clients to solicit donations or raise funds for the facility.~~]

[~~(h) Clients may participate in small-scale, time-limited activities to earn money for special activities if:~~]

[~~(1) the activity is not part of scheduled services or individual treatment plans;~~]

[~~(2) all benefits go directly to the clients;~~]

[~~(3) participation is completely voluntary; and~~]

[~~(4) the program ensures full compliance with confidentiality statutes.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

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Subchapter D. Program Services

General Program Services Provisions

40 TAC §148.202

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.202, concerning general program services provisions. These rules describe services required in all programs. The proposed amendment requires clients in residential programs to have an opportunity for eight continuous hours of sleep each night. The amendment is proposed to protect client health and well-being.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is better protection for clients in residential programs. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendment is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.202. Services Required In All Programs.

(a)-(k) (No change.)

(l) Clients in residential programs shall have an opportunity for eight continuous hours of sleep each night.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714652
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Special Provisions

40 TAC §148.234

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §148.234, concerning correctional facilities. These rules define special provisions applicable to correctional facilities. The proposed amendment specifies that a variance may be granted for community-based transitional therapeutic communities participating in the Criminal Justice Initiative when Texas Department of Criminal Justice contract requirements conflict with commission rules. The amendment is proposed to implement a review process before exemptions are granted.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be more thorough review of exemptions granted for community-based transitional therapeutic communities. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendment is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Chapter 464.

§148.234. Correctional Facilities.

(a) Programs located in correctional facilities are not required to meet commission standards in areas under the control of the correctional facility. Correctional regulations and contracts shall take precedence when correctional requirements conflict with commission requirements [~~Community based programs participating in the state's Criminal Justice Initiative shall implement modified policies and procedures as required by the Texas Commission on Alcohol and Drug Abuse and the Texas Department of Criminal Justice (TDCJ)~~].

(b) The commission may grant variances to community-based transitional therapeutic communitites when correctional requirements conflict with commission requirements [~~Programs in state correctional facilities are not required to meet standards in areas under the control of the correctional facility. Correctional regulations shall take precedence when correctional regulations conflict with commission requirements~~].

(c) Programs operating in correctional facilities are exempt from the following sections: [~~In-Prison Therapeutic Communities (IPTCs) and Substance Abuse Felony Punishment Facilities (SAFPs) shall implement modified policies and procedures meeting commission licensure requirements to the extent they do not conflict with TDCJ, (Institutional Division) rules~~].

(1) Sections 148.351-148.359 of this title (relating to Residential Physical Plant requirements);

(2) Sections 148.251-148.254 of this title (relating to Food and Nutrition); and

(3) Sections 148.261-148.269 of this title (relating to Medication).

(d) In addition, licensed treatment programs located in state correctional facilities are exempt from obtaining medical histories and physical examinations and providing medical care when these services are provided by the correctional facility [~~Programs operating in correctional facilities are exempt from the following sections:~~]

[~~(1) Sections 148.351-148.359 of this title (relating to Residential Physical Plant requirements);~~

[~~(2) Sections 148.251-148.254 of this title (relating to Food and Nutrition); and~~]

[~~(3) Sections 148.261-148.269 of this title (relating to Medication).~~]

[~~(e) In addition, licensed treatment programs located in state correctional facilities are exempt from obtaining medical histories and physical examinations and providing medical care when these services are provided by the correctional facility~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 150. Counselor Licensure

40 TAC §§150.3–150.8, 150.10, 150.31–150.33, 150.36–150.39, 150.52, 150.53, 150.61

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§150.3-150.8, 150.10, 150.31-150.33, 150.36-150.39, 150.52, 150.53, and 150.61, concerning definitions, exemptions, requirement to be licensed, discrimination, consumer information, fees, licensure application, requirements for licensure, background investigation, examination, issuing licenses, license expiration and renewal, inactive status, reciprocity, sanctions, and ethical standards. These rules define terms used in the chapter, describe circumstances under which a person must be licensed, detail the requirements and procedures used in the licensure process, describe possible sanctions, and establish ethical standards for licensed chemical dependency counselors.

Proposed changes to §150.3 include revising the definition of application to address reciprocity; replacing the terms approved clinical training institution, approved education institution, and approved practicum provider with the terms clinical training institution, pre-service education institution, and practicum provider; removing the definition of counselor trainee and revising the definition of counselor intern; removing unnecessary language from the definition of continuing education hour; updating the definition of direct supervision to reference interns instead of trainees; revising the definition of qualified credentialed counselor to remove the requirement for two years of chemical dependency counseling experience for credentialed individuals; clarifying the definition of sexual exploitation; and revising the definition of supervised work experience to require all supervised work experience to be performed under the auspices of a clinical training institution. The definition of TAADAC has been replaced by a definition for TAAP to reflect the organization's recent name change, and a definition has been added for treatment intervention.

Section 150.4 is revised to exempt individuals working for exempt faith-based chemical dependency treatment programs.

In §150.5, the term intervention has been clarified to read treatment intervention.

Redundant language is removed from §§150.6, 150.7, and 150.8.

Section 150.10 is revised to establish a $25 surcharge for individuals applying for a license through reciprocity. This fee is required to cover the cost of obtaining a criminal history report from the Federal Bureau of Investigations (FBI). The inactive status fee is reduced from $75 to $50, and specific late penalty fees are included to create a complete list of all possible fees. Language has also been added to allow payment through commercial checks.

Section 150.31 has been revised to eliminate redundant language and clarify that the described application packet is not required for reciprocity applicants.

Section 150.32 has been reorganized. Degrees accepted by the commission in place of the classroom and practicum hours are expanded to include behavioral science and human development. Language is added to clarify that the commission does not accept correspondence or video courses. Requirements related to practicums have been clarified: institutions of higher education do not need to be registered practicum providers, and practicum providers may contract with non-practicum providers to provide part of the work experience. Requirements for the 4,000 hours of work experience have been revised to require the individual to be an intern at a registered clinical training institution in order to receive credit.

Section 150.33 is revised to state that the commission will conduct a background investigation when it receives information about a possible conviction and that the background investigation for reciprocity applicants includes a criminal history report from the FBI. Categories describing the seriousness of offenses have been revised to create a separate category for murder and sexual offenses. The process has been changed to ensure that

the commission specifically determines whether or not a conviction is directly related to the duties and responsibilities of a chemical dependency counselor. For convictions that do relate, the rules have been revised to ensure the commission fully considers all relevant factors (not simply the seriousness of the offense and the time elapsed since the conviction) before recommending action instead of waiting until the sanctions process begins.

Changes to §150.36 clarify existing provisions and remove unnecessary language.

Section 150.37 allows certificate replacement fees to be paid by commercial check.

Continuing education requirements in §150.38 have been revised so that licensed counselors are not required to obtain additional continuing education credit in specified topics if they can show documentation of at least six hours of education in those topics. Language has been added to exclude correspondence and video courses. Specific language related to penalty fees has been moved to §150.10, and the time period allowed for renewal without reexamination has been lowered from two years to one year, as required by recent legislation.

Section 150.39 has been revised to require an attestation, to reduce the continuing education requirements from 60 hours to 30 hours, and to state that the inactive license automatically expires at the end of the two year inactive period of the individual has not reactivated the license.

Section 150.52 specifies that the reciprocity applicant must submit fingerprints and the $25 surcharge to the commission.

Section 150.53 requires the commission to impose sanctions when a violation has been committed, adds new language for administrative penalties, and bars an individual whose license has been revoked from reapplying for licensure for two years.

The Ethical Standards in §150.61 have been clarified. New provisions have also been added, including supervisory responsibilities, informing clients of ethical standards, and prohibiting personal relationships with clients.

These amendments are proposed to implement provisions of Sunset legislation, to clarify existing provisions, to strengthen ethical standards, to provide greater flexibility in continuing education, to ensure appropriate screening during background investigations, and to ensure that everyone who is accumulating supervised work experience for licensure receives structured training and supervision.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing the amended sections.

Ms. Bleier also has determined that for each year of the first five years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be exemption for faith-based counselors, more effective training for counselors, better screening of applicants, and enhanced oversite of licensed counselors . There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the proposed amendments is $35 (for reciprocity applicants only). A reciprocity applicant must pay $10 to obtain fingerprints, and the commission's cost is $25. Penalty fees for late renewals and fees for inactive status have been lowered. The fee rate is set by the agency and is not mandated by the Legislature.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233.

The amended sections are proposed under the Texas Civil Statutes, Article 4512o, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to establish procedures for the licensure of chemical dependency counselors.

The code affected by the amended rules is Texas Civil Statutes, Article 4512o.

§150.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Application-A complete application packet as described in §150.31 of this title (relating to Licensure Application) for examination applicants and §150.52 of this title (relating to Reciprocity) for reciprocity applicants.

[~~Approved clinical training institution-An individual or legal entity approved by the commission to supervise a counselor trainee who performs counseling, assessments, or interventions. The commission currently recognizes chemical dependency treatment facilities licensed by the commission or exempt from commission licensure which are approved as clinical training sites. Other programs or entities requesting this designation must receive approval on a case-by-case basis.~~]

[~~Approved education institution-An individual or legal entity approved by the commission to provide the 270 hours of education required for licensure. The commission currently recognizes regionally accredited institutions of higher education and education providers approved by Texas Association of Alcoholism and Drug Abuse Counselors. Other programs or entities requesting this designation must receive approval on a case-by-case basis.~~]

[~~Approved practicum provider-An individual or legal entity approved by the commission to supervise practicums. Approved practicum providers shall maintain ICRC standards for practicum providers.~~]

Clinical training institution-An individual or legal entity registered with the commission to supervise a counselor intern.

Continuing education hour-At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information. [~~Continuing education shall be related or specific to chemical dependency counseling.~~]

Counselor intern-A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered [~~an approved~~] clinical training institution who has been designated as a counselor intern by the institution. [~~A counselor intern shall only perform functions that are part of the supervised course of training.~~] The supervised course of training includes [~~educational hours,~~] practicum hours[~~,~~] and supervised work experience hours that are described in writing, performed under the auspices of the institution, and performed under the direct supervision of a qualified credentialed counselor.

[~~Counselor trainee-A person working to accumulate the 4,000 hours of supervised work experience required for licensure. A trainee receiving compensation for performing assessments, counseling, or crisis intervention shall be designated as a counselor intern by a~~

regionally accredited institution of higher education or an approved clinical training institution by September 1, 1996.]

Direct supervision-Oversight and direction of a counselor intern [trainee] provided by a qualified credentialed counselor. If the intern [trainee] has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern [trainee] is providing services. If the intern [trainee] has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone. The qualified credentialed counselor shall:

(A) assume responsibility for the actions of the intern [trainee] within the scope of the intern's [trainee's] clinical training;

(B) (No change.)

(C) conduct a complete review of the intern's [trainee's] written work product at least weekly;

(D) observe the intern [trainee] providing services to chemical dependency clients at least weekly; and

(E) meet with the intern [trainee] at least weekly to provide written and verbal feedback and direction.

Practicum provider-An individual or legal entity registered with the commission to supervise practicums.

Pre-service educational institution-An individual or legal entity registered with the commission to provide the 270 hours of education required for licensure.

Qualified credentialed counselor (QCC)-A licensed chemical dependency counselor or one of the professionals listed below [who can demonstrate two years of chemical dependency counseling experience or one year of chemical dependency counseling experience and 90 clock hours (six semester hours) of chemical dependency training including the 12 core functions from an accredited college or university or an education provider approved by Texas Association of Alcoholism and Drug Abuse Counselors. Documentation shall be available upon request. The following professionals are eligible to serve as qualified credentialed counselors]:

(A)-(H) (No change.)

Sexual exploitation-A pattern, practice, or scheme of conduct by a licensed chemical dependency counselor [person regulated under this Act] that may include sexual contact, that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It is not a defense to sexual exploitation of a client or former client if it occurs:

(A)-(D) (No change.)

Supervised work experience-Documented, verifiable, work experience providing chemical dependency services which is performed by a counselor intern under the auspices of a registered clinical training institution with direct supervision from a [trainee under the direct supervision of a] qualified credentialed counselor. Supervised work experience may be paid or voluntary. [An individual receiving compensation for performing assessments, counseling, or crisis intervention shall be designated as a counselor intern by a regionally accredited institution of higher education or an approved clinical training institution by September 1, 1996. These activities shall be part of the counselor intern's supervised clinical training and performed under the auspices of the institution.]

TAADAC-See TAAP [The Texas Association of Alcoholism and Drug Abuse Counselors].

TAAP-Texas Association of Addiction Professionals.

Treatment intervention-A meeting designed to persuade a chemically dependent individual to enter treatment.

§ 150.4. Exemptions.

(a) This chapter does not apply to the activities and services of the following people when they are acting within the scope of their authorized duties:

(1)-(3) (No change.)

(4) religious leaders of congregations providing pastoral counseling within the scope of their congregational duties or persons who are working for or providing counseling with a program exempted under Chapter 145 of this title (relating to Faith-Based Chemical Dependency Treatment Programs); and

(5) designated counselor interns who are obtaining supervised work experience or practicum hours as part of a supervised course of clinical training at a regionally accredited institution of higher education or a registered [an approved] clinical training institution or practicum provider.

(b)-(c) (No change.)

§150.5. License Required.

An individual identified to the public as a chemical dependency counselor must be licensed or exempt under this chapter. Except as provided by this chapter, individuals who are not licensed chemical dependency counselors shall not:

(1) (No change.)

(2) perform chemical dependency assessments or treatment interventions;

(3)-(4) (No change.)

§150.6. Scope of Practice.

A licensed chemical dependency counselor is licensed to provide chemical dependency services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the 12 core functions. The license does not qualify an individual to provide services outside this scope of practice. [Practicing beyond the scope of practice may lead to sanctions as described in §150.53 of this title (relating to Sanctions).]

§150.7. Discrimination Prohibited.

(a) The commission shall not discriminate against any person because of gender [sex], race, religion, age, national origin, or disability.

(b) A disabled applicant may request reasonable [special] accommodations [by completing a form supplied by the commission. The commission will make every effort to accommodate special needs without violating its laws and rules].

§150.8. Consumer Information.

[(a) Upon request, the commission provides information describing its regulatory function and procedures used for filing and resolving complaints.]

[(b)] Licensed chemical dependency counselors shall keep the certificate of licensure and public complaint notice prominently displayed in their place of business. The public complaint notice shall include:

(1) the name, mailing address, and telephone number of the commission; and

(2) a statement telling consumers that a complaint against a licensed chemical dependency counselor may be filed with the commission.

§150.10. Fees.

(a) The schedule for licensure fees is:

(1)-(2) (No change.)

(3) renewal fee:

(A)-(B) (No change.)

(C) late renewal penalty fee (up to 90 days after the license expiration date) - $37.50;

(D) late renewal penalty fee (between 90 days and one year after the license expiration date) - $75;

(4) inactive status fee - $50 [~~$75~~];

(5) certificate or sticker replacement fee - $25; [~~.~~]

(6) reciprocity surcharge - $25.

(b) The commission charges a fee for a list of licensed counselors or a set of mailing labels, equal to $.01 per name plus a $5.00 handling fee , or $25, whichever is greater.

(c) The commission contracts with an outside organization to administer the licensure examination, and the fee charged by the contract organization is subject to change. The current fee shall be printed in the notice of the opportunity for examination [~~sent to eligible applicants each testing cycle~~]. Examination fees shall be paid directly to the contract organization administering the examination.

(d) Licensure fees paid to the commission are not refundable [~~A licensee who submits a late renewal application shall pay a penalty fee as described in §150.38 of this title (relating to License Expiration and Renewal)~~].

(e) Fees shall be paid in full with a cashier's check, commercial check, or money order [~~Licensure fees paid to the commission are not refundable. The organization administering the licensure examination shall establish a refund policy for examination fees~~].

[~~(f) Fees shall be paid in full with a cashier's check or money order.~~]

§150.31. Licensure Application.

(a) A person seeking licensure through examination [~~who wants to be licensed~~] shall submit the application fee and a complete licensure application packet, which includes:

(1)-(5) (No change.)

(6) [~~the~~] two [~~required~~] letters of recommendation from LCDCs [~~reference~~]; and

(7) (No change.)

(b)-(c) (No change.)

(d) An application [~~packet~~] will not be accepted unless it is complete [~~and the applicant intends to test during the next cycle~~].

(1)-(2) (No change.)

§150.32. Requirements for Licensure.

(a) To be eligible for a license under this chapter, a person shall:

(1)-(2) (No change.)

(3) successfully complete 270 classroom hours of approved curricula which is compatible with ICRC standards [~~and provided by approved education institutions~~];

[~~(A) at least 135 hours shall be specific chemical dependency education;~~]

[~~(B) the remaining hours shall be related education;~~]

[~~(C) no more than 12 hours of related independent study or guided learning courses shall be accepted. Independent study or guided learning courses shall be faculty- or instructor-guided and monitored, and students shall have access to faculty or instructors for questions and assistance in the completion of course work;~~]

(4) complete 300 hours of approved supervised field work practicum which is compatible with ICRC standards [~~at an approved practicum site, and which shall be documented on a form provided by the commission~~];

(5) complete 4,000 hours of approved supervised experience working with chemically dependent persons [~~as defined in §150.3 of this title (relating to Definitions), which shall be documented on a form provided by the commission~~];

(6) submit two letters of recommendation [~~reference~~] from licensed chemical dependency counselors;

(7)-(11) (No change.)

(b) Applicants holding a baccalaureate degree in chemical dependency counseling, sociology, psychology, or any other degree approved by the commission are exempt from the 270 hours of education and the 300 hour practicum. The applicant must submit an official college transcript. [~~If the applicant submits supporting documentation, the commission may waive any portion of the 4,000 hours supervised work experience that it deems the applicant has met.~~] Degree programs approved by the commission include [~~but are not limited to~~]:

(1) baccalaureate degrees in social work , behavioral science, human development, or marriage and family that have an internship or field placement course; and

(2) (No change.)

(c) The following requirements apply to the 270 hours of classroom education. [~~No more than 12 hours of related independent study or guided learning courses shall be accepted. Independent study or guided learning courses shall be faculty- or instructor-guided and monitored, and students shall have access to faculty or instructors for questions and assistance in the completion of course work~~].

(1) The education shall be provided by a registered preservice education institution.

(2) At least 135 hours shall be specific chemical dependency education, and the remaining hours shall be related education.

(3) No more than 12 hours of education shall be obtained through independent study or long-distance learning courses.

(A) Only related education may be obtained through independent study or long distance learning courses.

(B) The courses shall be faculty- or instructor-guided and monitored, and students shall have access to faculty or instructors for questions and assistance in the completion of course work.

(C) Correspondence and video courses are not accepted

(d) The following requirements apply to the 300 hour practicum. [An applicant shall complete the required 270 hours of education before participating in a practicum or accumulating supervised work experience to meet licensure requirements, with one exception. Students enrolled in an accredited university, college, junior college, or community college may complete the practicum before completing the 270 hours of education if the practicum is:]

(1) The practicum must be completed under the supervision of a registered practicum provider or an accredited institution of higher education.

(2) An applicant shall complete the required 270 hours of education before participating in a practicum, with one exception. Students enrolled in an accredited university, college, junior college, or community college may complete the practicum before completing the 270 hours of education if the practicum is:

(A) part of the assigned curriculum; and

(B) performed under the auspices of the educational institution.

(3) The applicant must complete the practicum under the supervision of a single practicum provider or institution of higher education.

(A) A practicum provider or an institution of higher education may contract with other facilities so that the student can obtain experience at more than one site.

(B) The contracted sites do not need to be registered practicum providers.

(4) The commission shall not accept a practicum without documentation from the practicum provider that shows the student successfully completed all 300 hours

[(1) part of the assigned curriculum; and]

[(2) performed under the auspices of the educational institution].

(e) The following requirements apply to the 4,000 hours of supervised work experience. [An accredited university, college, junior college, or community college must be an approved practicum provider or send the students to approved practicum provider sites].

(1) The work experience must be part of a supervised course of training at a registered clinical training institution.

(2) An applicant cannot accumulate supervised work experience until the 270 classroom hours are complete.

(3) The applicant must be designated as a counselor intern by the clinical training institution.

(4) The work may be paid or voluntary.

(f) An unlicensed graduate has three years to complete testing and may continue to provide counseling for up to three years after the date of graduation if the graduate is working under appropriate supervision at a registered clinical training institution [The applicant must complete the practicum under the supervision of a single practicum provider. The practicum provider may contract with other facilities so that the student can obtain experience at more than one site].

[(g) The commission shall not accept a practicum without documentation from the practicum provider that shows the student successfully completed all 300 hours.]

[(h)] An applicant receiving compensation for performing assessments, counseling, or crisis intervention as part of the 4,000 hours of supervised work experience shall be designated as a counselor intern by a regionally accredited institution of higher education or a registered an approved clinical training institution.]

[(i) A graduate may continue to provide counseling until receiving the license if the graduate:]

[(1) is working under appropriate supervision at a registered an approved clinical training institution;]

[(2) is eligible to sit for the next examination;]

[(3) takes every scheduled examination until successful or ineligible.]

§150.33. Background Investigation.

(a) The commission conducts a background investigation on every applicant for licensure. Checks are conducted when:

(1) [when] an applicant has met all other requirements for licensure; [and]

(2) [when] a licensed chemical dependency counselor applies for license renewal; and[.]

(3) the commission receives information of a possible conviction.

(b) The commission obtains a criminal history report from the Texas Department of Public Safety. When an applicant applies through reciprocity [If authorized by statute], the commission [will] also obtains [obtain] a criminal history report from the Federal Bureau of Investigations (FBI).

(c) The individual shall disclose and provide complete information regarding all misdemeanor and felony convictions. Failure to make full and accurate disclosure will be grounds for immediate application denial [of the application], disciplinary action, or license revocation.

(d) Applications with criminal histories are categorized according to the seriousness of the offense. The category shall be determined by the most serious offense, as defined by law. [The commission evaluates the present fitness of any individual who has a record of misdemeanor or felony convictions to provide chemical dependency counseling].

(1) Category I. The following felonies:

(A) attempted murder and homicide; and

(B) sexual assault, including but not limited to attempted sexual assault, rape, indecency with a child, molestation, sexual assault of a child, and indecent exposure.

(2) Category II: Felonies or misdemeanors that may result in harm to others, including but not limited to:

(A) vehicular manslaughter;

(B) involuntary manslaughter;

(C) kidnapping and attempted kidnapping;

(D) arson;

(E) robbery;

(F) attempted robbery;

(G) assault (felony or misdemeanor);

(H) theft from person (felony or misdemeanor); and

(I) DWI involving injury or accident.

(3) Category III: Felonies which do not result in harm to others, including but not limited to:

(A) any combination of three or more misdemeanors from Category II;

(B) burglary;

(C) theft (felony);

(D) three or more DWIs;

(E) felony DWI;

(F) larceny (felony);

(G) forgery (felony);

(H) possession of a controlled substance (felony);

(I) delivery of a controlled substance (felony);

(J) fraud/credit card abuse;

(K) unauthorized use of a motor vehicle;

(L) unlawfully carrying a weapon (felony or misdemeanor); and

(M) burglary of a vehicle.

(4) Category IV: Misdemeanors which do not result in harm to others. Three or more Category IV convictions shall be reclassified as a Category III offense. Category IV offenses include but are not limited to:

(A) one or two DWIs;

(B) possession of a controlled substance (misdemeanor);

(C) disorderly conduct;

(D) arrest and convictions resulting from traffic warrants ;

(E) reckless damage;

(F) resisting arrest;

(G) theft (misdemeanor);

(H) bad check;

(I) prostitution;

(J) public intoxication;

(K) criminal mischief (misdemeanor); and

(L) driving while license suspended.

(e) The commission shall determine if the conviction(s) are directly related to the duties and responsibilities of a chemical dependency counselor. The commission shall consider the following factors: [~~Factors considered by the commission in determining the present fitness of a person who has been convicted of a crime may include:~~]

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in chemical dependency counseling;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of chemical dependency counseling.

[~~(1) the number and nature of criminal conviction(s);~~]

[~~(2) the age at the time each crime was committed;~~]

[~~(3) the amount of time since last conviction;~~]

[~~(4) the conduct and work history of the person before and after the criminal conviction(s);~~]

[~~(5) evidence of the person's rehabilitation efforts and outcome;~~]

[~~(6) two letters of recommendation from qualified credentialed counselors; and~~]

[~~(7) other evidence of fitness that may be relevant~~].

(f) If the conviction(s) do not relate to the duties and responsibilities of a chemical dependency counselor, the commission shall process the license application according to standard procedures [~~If the person's criminal activity is related to a history of chemical dependency, the commission will also consider the person's efforts and success in achieving recovery, including participation in treatment and/or self-help groups, number of relapses, and length of time in continuous recovery~~].

(g) If the conviction(s) do relate to the duties and responsibilities of a chemical dependency counselor, the commission shall evaluate the present fitness of the individual to provide chemical dependency counseling [~~Applications with criminal histories are categorized according to the seriousness of the offense. The category shall be determined by the most serious offense, as defined by law.~~]

[~~(1) Category I: Felonies or misdemeanors that may result in harm to others. Category I offenses include but are not limited to:~~]

[~~(A) arson;~~]

[~~(B) robbery;~~]

[~~(C) attempted robbery;~~]

[~~(D) assault (felony or misdemeanor);~~]

[~~(E) theft from person (felony or misdemeanor); and~~]

[~~(F) DWI involving injury or accident.~~]

[~~(2) Category II: Felonies which do not result in harm to others. Category II offenses include but are not limited to:~~]

[~~(A) any combination of three or more misdemeanors from Category III;~~]

[~~(B) burglary;~~]

[~~(C) theft (felony);~~]

[~~(D) three or more DWIs;~~]

[~~(E) felony DWI;~~]

[~~(F) larceny (felony);~~]

[~~(G) forgery (felony);~~]

[~~(H) possession of a controlled substance (felony);~~]

[~~(I) delivery of a controlled substance (felony);~~]

[~~(J) fraud/credit card abuse;~~]

[~~(K) unauthorized use of a motor vehicle;~~]

[~~(L) unlawfully carrying a weapon (felony or misdemeanor); and~~]

[~~(M) burglary of a vehicle.~~]

[~~(3) Category III: Misdemeanors which do not result in harm to others. Three or more Category III convictions shall be reclassified as a Category II offense. Category III offenses include but are not limited to:~~]

[~~(A) one or two DWIs;~~]

[~~(B) possession of a controlled substance (misdemeanor);~~]

[~~(C) disorderly conduct;~~]

[~~(D) arrest and convictions resulting from traffic warrants;~~]

[~~(E) reckless damage;~~]

[~~(F) resisting arrest;~~]

[~~(G) theft (misdemeanor);~~]

[~~(H) bad check;~~]

[~~(I) prostitution;~~]

[~~(J) public intoxication;~~]

[~~(K) criminal mischief (misdemeanor); and~~]

[~~(L) driving while license suspended.~~]

(h) The commission uses the following guidelines in evaluating an individual's present fitness: [~~Licensure staff process the applications according to the following eligibility criteria. Meeting the following criteria does not ensure that the application will be approved because the factors stated in subsection (e) of this section are considered in making the decision.~~]

(1) An applicant with a Category I conviction should have at least fifteen years since the last Category I conviction.

(2) An applicant with a Category II conviction should have at least ten years since the last Category II conviction to be eligible for a license.

(3) An applicant with a Category III conviction should have at least seven years since the last Category III conviction to be eligible for a license.

(4) An applicant with a Category IV conviction should have at least five years since the last Category IV conviction to be eligible for a license

[~~(1) All applicants shall have a stable work and/or education history. Applicants with a history of chemical dependency shall also demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.~~]

[~~(2) An applicant with a Category I conviction shall have at least ten years since the last Category I conviction to be eligible for a license.~~]

[~~(3) An applicant with a Category II conviction shall have at least seven years since the last Category II conviction to be eligible for a license.~~]

[~~(4) An applicant with a Category III conviction shall have at least five years since the last Category III conviction to be eligible for a license~~].

(i) The commission shall also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a chemical dependency counselor: [~~The decision regarding appropriate action on the application will be made by the assistant deputy director for compliance and the executive director in cases involving one or more of the following convictions:~~]

(1) the age at the time each crime was committed;

(2) the conduct and work history of the person before and after the criminal conviction(s);

(3) evidence of the person's rehabilitation efforts and outcome;

(4) two letters of recommendation from qualified credentialed counselors; and

(5) other evidence of fitness that may be relevant.

[~~(1) murder, including but not limited to attempted murder, vehicular manslaughter, involuntary manslaughter, and homicide;~~]

[~~(2) sexual assault, including but not limited to attempted sexual assault, rape, indecency with a child, molestation, sexual assault of a child, and indecent exposure; and~~]

[~~(3) kidnapping, attempted kidnapping, or a related conviction~~].

(j) If the person's criminal activity is related to a history of chemical dependency, the commission will also consider the person's efforts and success in achieving recovery. Applicants with a history of chemical dependency should demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery [~~An applicant for licensure or renewal whose application is denied may request a hearing under the procedures established in Chapter 142 of this title (relating to Investigations and Hearings). To the extent that the denial is based on the applicant's criminal background, the hearing shall also be governed by Texas Civil Statutes, Article 6252-13c~~].

(k) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedures established in Texas Administrative Code, Title 40, Chapter 142. To the extent that the disciplinary action is based on the applicant's criminal background, the hearing shall also be governed by Texas Civil Statutes, Article 6252-13c.

§150.36. Examination.

(a)-(c) (No change.)

(d) To be eligible for either the written or the oral examination, an applicant shall:

(1) submit a complete application packet as defined in §151.31 and pay the application fee; and

(2) pay the written examination fee to the test administrator before the deadline [~~send the commission a letter of intent to test before the deadline; and~~]

[~~(3) pay the written examination fee to the test administrator before the deadline~~].

(e) To be eligible for the oral examination, an applicant shall also submit an acceptable case study to the test administrator.[:]

[~~(1) submit a complete application packet as defined in §150.31 and pay the application fee;~~]

[~~(2) submit an acceptable case study to the test administrator;~~]

[~~(3) send the commission a letter of intent to test before the deadline; and~~]

[~~(4) pay the oral examination fee to the test administrator before the deadline.~~]

(f) (No change.)

(g) An applicant shall not sit for the examination more than four times. The applicant may take one or both parts of the examination at each sitting [~~If requested by someone who fails the examination, the commission will provide a written analysis of the person's performance on the examination, if that information is available to the commission~~].

(h) An individual who fails the examination four times is ineligible for licensure and cannot perform counseling, assessments, or treatment interventions [~~An applicant shall not sit for the examination more than four times. The applicant may take one or both parts of the examination at each sitting~~].

[~~(i) An individual who fails the examination four times is ineligible for licensure and cannot perform counseling, assessments, or interventions.~~]

§150.37. Issuing Licenses.

(a) After passing the examination, an applicant shall pass a background investigation and pay the licensure fee. [~~The licensure fee must be paid within one year from the date of request for payment.~~]

(b)-(e) (No change.)

(f) A license replaced because of a printing error or mail damage will be replaced without cost, but all other license replacements require a fee, as specified in §150.10 of this title (relating to Fees). The fee shall be paid in advance with a money order, commercial check, or cashier's check.

§150.38. License Expiration and Renewal.

(a) (No change.)

(b) To renew a license, the counselor shall:

(1)-(3) (No change.)

(4) complete at least 60 hours of continuing education that is related to chemical dependency and approved by the commission during the two-year licensure period. If an individual does not have six documented hours in any of the following areas, the continuing education must include [~~This shall include at least 15 hours specific to chemical dependency and~~] at least three hours in each of those [~~the following~~] areas:

(A)-(E) (No change.)

(5) Individuals applying for licensure renewal who can show at least six education hours of documented [~~compulsive gambling~~] training in any of these five topics are not required to obtain any additional hours of [~~compulsive gambling~~] training in that topic. Instead, the applicant shall obtain an additional three hours of chemical dependency training to complete the required 60 hours.

(c) The commission will accept continuing education hours that meet the following criteria. Hours that do not meet these criteria may be evaluated [~~Until the commission prepares or approves continuing education programs for licensed chemical dependency counselors, the commission will approve all continuing education (CE) hours~~] on a case-by-case basis.

(1) (No change.)

(2) The commission will accept continuing education credits from Texas Association of Addiction Professionals [~~Alcoholism and Drug Abuse Counselors~~] and other recognized certification boards, including, but not limited to, the Texas State Board of Nurse Examiners and the Texas State Board of Social Work Examiners. Continuing education certificates must contain:

(A)-(G) (No change.)

(3) (No change.)

(4) No more than 12 hours of [~~related~~] independent study or long-distance [~~guided~~] learning courses will be accepted. [~~Independent study or guided learning courses must be faculty- or instructor-guided and monitored, and students must have access to faculty or instructors for questions and assistance in the completion of such course work.~~]

(A) Independent study or guided learning courses must be faculty- or instructor-guided and monitored, and students must have access to faculty or instructors for questions and assistance in the completion of such course work.

(B) Correspondence and video courses are not accepted.

(d) Renewal fees are due on or before the expiration date. A licensee who submits a late renewal application shall pay a penalty fee in addition to the renewal application and licensure fees , as provided in §150.10 of this title (relating to Fees). Failure to receive notice from the commission does not waive or extend renewal deadlines.

[~~(1) If the license is renewed within the 90-day period following the expiration date, the penalty fee is equal to one-half the current renewal total examination fee.~~]

[~~(2) If the license is renewed after the 90-day period following the expiration date, but within one year two years from the expiration date, the penalty fee is equal to the current renewal total examination fee.~~]

(e) A license cannot be renewed more than one year [~~two years~~] after the date of expiration. To obtain a new license, the person shall comply with all requirements and procedures for obtaining an initial license. This includes passing the written and oral examinations , with one exception. If the person was licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay a fee that is equal to two times the required renewal fee.

(f) (No change.)

[~~(g) A person who is denied a renewal license due to criminal conviction may apply for a new license after the appropriate time has elapsed as specified in §150.33(h) of this title (relating to Background Investigation).~~]

§150.39. Inactive Status.

(a) A licensee may place his or her license on inactive status by submitting a written request and paying the inactive fee before the license expires. The written request must include an attestation that the individual will not provide counseling services, use the "LCDC" credential, or otherwise represent himself or herself as a counselor while on inactive status.

(b) (No change.)

(c) Inactive status periods shall not exceed two years. [~~The commission may approve consecutive inactive status periods on a case-by-case basis. The person must meet the eligibility criteria and pay the inactive status fee for each two-year period of inactive status~~].

(1) An inactive license will automatically expire at the end of the two year period.

(2) The person must meet the eligibility criteria and pay the inactive status fee for the two-year period of inactive status.

(d) (No change.)

(e) To return to active status, the person shall submit a written request to reactivate the license, a completed renewal application form, the renewal application fee and the license renewal fee, and documentation of 30 hours of continuing education [~~the 60 hours of continuing education (as normally required to renew a license)~~] within the[~~last~~] inactive status period.

§ 150.52. Reciprocity.

(a)-(c) (No change.)

(d) As part of the background investigation, the commission shall obtain a criminal history report from the Federal Bureau of Investigations (FBI).

(1) The applicant shall submit a set of fingerprints obtained through an authorized law enforcement agency to the commission.

(2) The applicant shall also pay a $25 surcharge to cover the cost of obtaining the criminal history report from the FBI.

§ 150.53. Sanctions.

(a) The commission shall [~~may~~] refuse to issue or renew a license, place on probation a license holder whose license has been suspended, reprimand a license holder, or revoke or suspend a license for:

(1)-(7) (No change.)

(8) refusing to perform an act or service for which the person is licensed to perform under this chapter on the basis of the client's or recipient's sex, race, religion, age, national origin, or handicaps; or

(9) committing an act of sexual exploitation in violation of Penal Code, §12.14, or for which liability exists under Civil Practice and Remedies Code, Chapter 81[~~; or~~]

[~~(10) not attending a hearing or not responding to correspondence from the commission~~].

(b) (No change.)

(c) The commission may impose an administrative penalty against a licensee who violates Texas Civil Statutes, Article 4512o, or a rule or order adopted under the statute [~~Surrender or expiration of a license does not interrupt the investigation or sanctions process. Unless the licensed chemical dependency counselor is cleared through the investigation or hearings process, the commission shall impose the proposed sanctions. The individual is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved~~].

(d) Surrender or expiration of a license does not interrupt the investigation or sanctions process. The individual is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved.

(e) An individual whose license has been revoked is not eligible to apply for licensure until two years have passed since the date of revocation.

§150.61. Ethical Standards.

(a) [~~Mandate.~~] All applicants, and licensed chemical dependency counselors shall comply with these ethical standards.

(b) [~~Discrimination not allowed.~~] The licensed chemical dependency counselor shall not discriminate against any client or other person on the basis of gender [~~sex~~], race, religion, age, national origin, disability , sexual orientation, or economic condition [~~or handicap~~].

(c) [~~Responsibility.~~] The licensed chemical dependency counselor shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(d) [~~Competence.~~] The licensed chemical dependency counselor shall:

(1) report violations of Texas Civil Statutes, Article 4512o, or rules adopted under the statute, including violations of this section, to the commission [~~try to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons~~];

(2) recognize the limitations of his or her ability and shall not offer services outside the counselor's scope of practice or use techniques that exceed his or her professional competence [~~report violations of Texas Civil Statutes, Article 4512o, or rules adopted under the statute, including violations of this section, to the commission~~]; and

(3) try to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons [~~recognize the limitations of his or her ability and shall not offer services or use techniques that exceed his or her professional competence.~~]

[~~(4) not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol; and~~]

[~~(5) support peer assistance programs~~].

(e) The licensed chemical dependency counselor shall, not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol. [~~Legal standards and professional conduct. The licensed chemical dependency counselor shall uphold the law and refrain from unprofessional conduct. In so doing, the licensed chemical dependency counselor shall:~~

[~~(1) not make any claim, directly or by implication, that the counselor possesses professional qualifications or affiliations that the counselor does not possess;~~]

[~~(2) not mislead or deceive the public or any person;~~]

[~~(3) not promote, develop, market, profit from, or associate himself or herself with any commercial product, unless the counselor has determined that the product does not tend to mislead the public, is factually accurate, and is consistent with the ethical standards of the profession as set forth in this Section;~~

[~~(4) not commit any crime of moral turpitude, or any act which might tend to discredit the profession;~~]

(f) The licensed chemical dependency counselor shall uphold the law and refrain from unprofessional conduct. In so doing, the licensed chemical dependency counselor shall: [~~Public statements. The licensed chemical dependency counselor shall:~~]

(1) comply with all applicable laws and regulations;

(2) ~~not make any claim, directly or by implication, that the counselor possesses professional qualifications or affiliations that the counselor does not possess;~~

(3) not mislead or deceive the public or any person; and

(4) refrain from any act which might tend to discredit the profession

[~~(1) report information fairly and accurately to clients, other professionals, and the general public, and shall not make inappropriate, unprofessional, or inaccurate representations;~~]

[~~(2) acknowledge the work of others, including but not limited to, practicum or work experience;~~]

[~~(3) document materials and techniques used in the performance of the counselor's professional services, and~~]

[~~(4) advise all persons the counselor instructs or trains, in the skills or techniques of chemical dependency counseling, of the training or qualifications required to properly perform those skills or techniques~~].

(g) [~~Publication credit or acknowledgement.~~] The licensed chemical dependency counselor shall [~~give credit to, or expressly acknowledge all persons or works which have contributed to or directly influenced any publication of the counselor~~] :

(1) report information fairly, professionally, and accurately to clients, other professionals, and the general public;

(2) maintain appropriate documentation of services provided; and

(3) provide responsible and objective training and supervision to interns and subordinates under the counselor's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(h) In any publication, the licensed chemical dependency counselor shall give written credit to all persons or works which have contributed to or directly influenced the publication [~~Client welfare. The licensed chemical dependency counselor shall respect a client's dignity, and shall not engage in any action that may injure the welfare of any client or person to whom the counselor is providing services. The licensed chemical dependency counselor shall:~~]

[~~(1) remain loyal and professionally responsible to the client at all times, and shall inform the client of the counselor's loyalties and responsibilities;~~]

[~~(2) not engage in any activity which could be considered a professional conflict, and shall immediately remove himself or herself from such a conflict if one occurs;~~]

[~~(3) terminate any professional relationship or counseling service which is not beneficial, or is in any way detrimental to the client;~~]

[~~(4) always act in the best interest of the client;~~]

[~~(5) never require a client to divulge confidential information that is not necessary and appropriate for the services being provided; obtained from another professional, without obtaining the express informed consent of the professional and the client; and~~]

[~~(6) not offer or provide chemical dependency counseling or related services in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling~~].

(i) The licensed chemical dependency counselor shall respect a client's dignity, and shall not engage in any action that may injure the welfare of any client or person to whom the counselor is providing services. The licensed chemical dependency counselor shall: [~~Confidentiality. The licensed chemical dependency counselor shall protect the privacy of all clients and shall not disclose confidential information without express written consent, unless required by law. The licensed chemical dependency counselor shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:~~]

(1) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(2) remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(3) not engage in any activity which could be considered a professional conflict, and shall immediately remove himself or herself from such a conflict if one occurs;

(4) terminate any professional relationship or counseling service which is not beneficial, or is in any way detrimental to the client;

(5) always act in the best interest of the client;

(6) not request a client to divulge confidential information that is not necessary and appropriate for the services being provided; and

(7) not offer or provide chemical dependency counseling or related services in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling

[~~(1) inform the client, and obtain the client's consent, before tape-recording the client, allowing another person to observe or monitor the client, or using client records for any purpose other than the provision of chemical dependency treatment of that client;~~]

[~~(2) ensure the maintenance of confidentiality of client records;~~]

[~~(3) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case;~~]

[~~(4) make every effort to avoid invasion of the privacy of the client; and~~]

[~~(5) not reveal client identifying information, except as required by law, without the express written consent of the client~~].

(j) The licensed chemical dependency counselor shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensed chemical dependency counselor shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall: [~~Client relationships. The licensed chemical dependency counselor shall inform the client about all relevant and important aspects of the professional relationship between the client and the counselor, and shall:~~]

(1) inform the client, and obtain the client's consent, before tape-recording the client, allowing another person to observe or monitor the client;

(2) ensure the security of client records;

(3) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case;

(4) avoid invasion of the privacy of the client; and

(5) provide the client his/her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect the client's confidentiality; and

(6) ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

[~~(1) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances which might influence the professional relationship;~~

[~~(2) not enter into a professional relationship with members of the family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship; and~~]

[~~(3) not engage in any type or form of sexual activity with a client~~].

(k) The licensed chemical dependency counselor shall inform the client about all relevant and important aspects of the professional relationship between the client and the counselor, and shall: [~~Relationships with other professionals. The licensed chemical dependency counselor shall treat other professionals with respect, courtesy, and fairness, and shall:~~]

(1) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances which might influence the professional relationship;

(2) not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(3) not establish a personal relationship with any client;

(4) not engage in any type or form of sexual behavior with a client nor accept as clients anyone with whom they have engaged in sexual behavior; and

(5) not exploit relationships with clients for personal gain, including social or business relationships

[~~(1) not provide or offer to provide professional services to a client who is receiving chemical dependency treatment from another professional, except with the knowledge of the other professional and the consent of the client, until treatment with the other professional ends; and~~

[~~(2) cooperate with the commission, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information unless prohibited by law~~].

(l) The licensed chemical dependency counselor shall treat other professionals with respect, courtesy, and fairness, and shall: [~~Remuneration. The licensed chemical dependency counselor shall, in advance of treatment, establish financial arrangements with a client, which shall be in accordance with professional standards in the relevant community, including, without limitation, informing the client of the counselor's fee schedule for all treatment services to be provided to the client, and shall not:~~]

(1) not provide or offer to provide professional services to a client who is receiving chemical dependency treatment from another professional, except with the knowledge of the other professional and the consent of the client, until treatment with the other professional ends;

(2) cooperate with the commission, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information unless prohibited by law; and

(3) not in any way exploit relationships with supervisees, employees, students, research participants or volunteers.

[~~(1) charge exorbitant or unreasonable fees for any treatment service;~~

[~~(2) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for treatment;~~

[~~(3) engage in fee splitting with other professionals, without the written consent of the client;~~

[~~(4) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for treatment provided; and~~

[~~(5) provide treatment to a client, or accept a private professional fee or any gift or gratuity from a client if the client is entitled to chemical dependency treatment free of charge, or at minimal cost to the client, through an agency or other institution, unless the client consents in writing~~].

(m) Prior to treatment, the licensed chemical dependency counselor shall inform the client of the counselor's fee schedule and establish financial arrangements with a client. The counselor shall not: [~~Professional obligations. The licensed chemical dependency counselor shall:~~]

(1) charge exorbitant or unreasonable fees for any treatment service;

(2) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for treatment;

(3) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for treatment provided;

(4) accept a private professional fee or any gift or gratuity from a client if the client's treatment is paid for by another funding source, or if the client is receiving treatment from a facility where the counselor provides services (unless all parties agree to the arrangement in writing).

[~~(1) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client; and~~

[~~(2) in all activities of the profession, act to promote the welfare of all human beings~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714659
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

♦ ♦ ♦

40 TAC §§150.71–150.73

The Texas Commission on Alcohol and Drug Abuse proposes new §§150.71-150.73, concerning pre-service education institutions, clinical training institutions, and practicum providers. These sections describe requirements for organizations that provide education and training for individuals preparing to be chemical dependency counselors. The new sections are proposed to formally adopt existing standards for clinical training insitutions and practicum providers, improving oversite of these organizations. Rules are proposed for pre-service education institutions to implement a new registration process. Previously, the commission accepted hours from education providers approved by the Texas Association of Addiction Professionals.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the new sections.

Ms. Bleier also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be improved oversite for institutions that education and train chemical dependency counselors. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed new rules.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233.

The new sections are proposed under the Texas Civil Statutes, Article 4512o, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to establish procedures for the licensure of chemical dependency counselors.

The code affected by the new rules is Texas Civil Statutes, Article 4512o.

§150.71. Pre-Service Education Institutions (PSEI).

(a) To become a pre-service education institution (PSEI), an organization must submit a complete application and agree to comply with commission requirements described in the application packet.

(b) The clinical training institution (CTI) shall receive the registration letter and PSEI number before training begins.

(c) The approval is valid for two years. The PSEI shall reapply at every two years by submitting the Application Update Form provided by the commission. The commission may mail a courtesy notice, but it is the PSEI's responsibility to reapply at least 45 days before the expiration date.

(d) The PSEI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the education program;

(2) addition of a new education site; or

(3) a change in the organization's name.

(e) The commission may withdraw approval if the PSEI fails to comply with minimum requirements.

§150.72. Clinical Training Institutions.

(a) To become a clinical training institution (CTI), an organization must submit a complete application and agree to comply with the standards in this section.

(b) The CTI shall receive the registration letter and CTI number before training begins.

(c) Approval allows the organization to provide clinical training at any of its programs or sites.

(d) The approval is valid for two years. The CTI shall reapply every two years by submitting the Application Update Form provided by the commission. The commission may mail a courtesy notice, but it is the CTI's responsibility to reapply at least 45 days before the expiration date.

(e) The CTI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the training program; and

(2) a change in the organization's name.

(f) The commission may withdraw approval if the CTI fails to comply with minimum requirements at any site.

(g) The CTI shall establish admission criteria. No applicant shall be admitted without:

(1) documentation that the applicant has successfully completed the 270 hours of required classroom education; and

(2) a signed ethics agreement which is consistent with the LCDC Ethical Standards in §150.61 of this title (relating to Ethical Standards).

(h) The CTI shall appoint a CTI coordinator who is a qualified credentialed counselor (QCC). The CTI coordinator shall oversee all training activities and ensure compliance with commission requirements and rules.

(i) All interns shall work under the direct supervision of a qualified credentialed counselor (QCC). A single QCC shall not supervise more than five interns.

(j) The CTI shall develop a written training curricula that includes:

(1) clinical training goals and objectives for each intern; and

(2) clinical training experiences and activities developed for each intern which relate to the intern's goals and objectives.

(k) The CTI shall evaluate each intern's progress in writing and provide the intern with appropriate information and guidance. Supervision and feedback procedures shall be documented in writing.

(l) The CTI shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the commission.

(m) The CTI shall review and sign each intern's Supervised Work Experience Form(s).

(n) The CTI shall maintain the following documentation for four years:

(1) curricula;

(2) verification of current credentials of all training personnel;

(3) supervision assignments; and

(4) student files, which shall include:

(A) application and documentation of eligibility;

(B) ethics agreement;

(C) copy of the Supervised Work Experience Form.

§150.73. Practicum Providers.

(a) To become a practicum provider, an organization must submit a complete application and agree to comply with the requirements in this section.

(b) The provider shall receive the registration letter and practicum provider number before training begins.

(c) Approval allows the organization to provide practicum supervision at any of its programs or sites.

(d) The approval is valid for two years. The practicum provider shall reapply every two years by submitting the Application Update Form provided by the commission. The commission may mail a courtesy notice, but it is the provider's responsibility to reapply at least 45 days before the expiration date.

(e) The provider shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the training program; and

(2) a change in the organization's name.

(f) The commission may withdraw approval if the practicum provider fails to comply with minimum requirements at any site.

(g) The practicum provider shall establish admission criteria. No applicant shall be admitted without:

(1) documentation that the applicant has successfully completed the 270 hours of required classroom education; and

(2) a signed ethics agreement which is consistent with the LCDC Ethical Standards in §150.61 of this title (relating to Ethical Standards).

(h) The practicum provider shall appoint a practicum coordinator who is a qualified credentialed counselor (QCC). The practicum coordinator shall oversee all training activities and ensure compliance with commission requirements and rules.

(i) The practicum provider shall develop a written training curricula.

(1) The training program shall include learning objectives, learning activities, and the estimated number of hours of experience in each of the 12 core functions.

(2) All training shall be provided by QCCs.

(3) Training may be provided through a contractual agreement with other agencies if the practicum provider agency does not perform all of the 12 core functions. All contractual agreements must be documented and submitted to the commission within 30 days for approval.

(4) Although the practicum may involve multiple sites and facilities, all practicum credit is awarded under a single practicum provider number and the designated practicum coordinator maintains responsibility for the overall practicum training.

(5) An intern must complete all 300 hours of the practicum with a single approved practicum provider. A practicum provider cannot grant partial credit for a practicum.

(j) All interns shall work under the direct supervision of a qualified credentialed counselor (QCC). A single QCC shall not supervise more than five interns.

(k) The QCC shall evaluate each intern's progress in writing and provide the intern with appropriate information and guidance.

(1) The practicum coordinator will complete written evaluations with input from other QCCs who have provided direct supervision for the intern.

(2) The coordinator will complete a Practicum Student Evaluation Form and a Supervised Field Work Practicum Documentation of Hours Form for each intern.

(l) The practicum provider shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the commission.

(m) The practicum provider shall maintain the following documentation for four years:

(1) curricula;

(2) letters of agreement with other agencies (if applicable);

(3) verification of current credentials of all training personnel;

(4) supervision assignments; and

(5) student files, which shall include:

(A) application and documentation of eligibility;

(B) ethics agreement;

(C) copy of the Practicum Documentation Form; and

(D) copy of the Practicum Student Evaluation Form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714660
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 349-6609

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter G. Port Authority Permits

43 TAC §§28.90-28.92

The Texas Department of Transportation proposes new §§28.90-28.92, concerning port authority permits.

Senate Bill 1276, 75th Legislature, 1997, amended Chapter 623, Transportation Code, by adding Subchapter K, to provide that the department may authorize a port authority to issue permits for the movement of oversize and overweight vehicles carrying cargo on State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville. The proposed new sections outline the procedures for the issuance of such permits.

The proposed new sections are necessary to implement the provisions of Senate Bill 1276 and to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

New §28.90, Purpose, provides that the purpose of this subchapter is to set forth the requirements and procedures applicable to the issuance of permits by the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) for the movement of oversize and overweight vehicles.

New §28.91, Responsibilities, outlines responsibilities of the Port of Brownsville and the department under this subchapter; stipulates maximum fees and how fees collected under this subchapter shall be used; provides how the department will be reimbursed by the Port Authority for maintenance of State Highway 48/State Highway 4 between the Port of Brownsville and the Gateway International Bridge; stipulates how permits shall be issued by the Port of Brownsville and how such shall be transmitted to the department; provides for the department to conduct audits related to the issuance of permits under this subchapter and stipulates how such audits will be conducted; provides for revocation of the Port of Brownsville's authority to issue permits and provides procedures for appealing any such revocation; stipulates travel requirements and restrictions for any permits issued under this subchapter by the Port of Brownsville; and stipulates that the Port of Brownsville shall enter into a maintenance contract with the department for the maintenance of State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville.

New §28.92, Permit Issuance Requirements and Procedures, stipulates the information to be included on a permit application, the form of application, and how permits issued under this subchapter may be used; payment of permit fees; weight limits and restrictions; vehicle registration requirements; motor carrier registration requirements; speed limit restrictions; and states that this subchapter expires March 1, 2001.

Frank J. Smith, Director, Budget and Finance Division, has determined that there will be fiscal implications as a result of enforcing or administering the proposed new sections. The effect on state government for the first five-year period will be an increase in state revenue. However, at the present time the department does not know what the amount of the fee will be and has no method of determining the number of permits which will be issued under this program. The revenue received, less a maximum of 10% for administrative costs to be retained by the Port of Brownsville, will be used to offset department costs of maintaining State Highway 48/State Highway 4. The department will incur minimal administrative costs and any additional costs needed to maintain the highway will be offset by the increase in revenue.

The Port of Brownsville is the only local government affected by the proposed sections. Any costs incurred by the Port of Brownsville will be offset by 10% of the revenue generated from the permit fee which is retained to cover administrative costs. Carriers operating oversize/overweight vehicles on the subject roadway will incur a permit fee of up to $80 per trip. There are no anticipated costs for persons required to comply with the sections as proposed.

Mr. Lawrance Smith, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Mr. Lawrance Smith also has determined that for each year of the first five years the new sections are in effect, the public benefits will be increased efficiency and effectiveness in the issuance of oversize and overweight permits, streamlining the process for moving oversize and overweight vehicles and loads. The effect on small or large businesses is the same. Any carriers operating oversize/overweight vehicles on State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville will be required to pay a permit fee of up to $80 per trip.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new chapter. The public hearing will be held at 1:30 p.m. on December 11, 1997, in the Brownsville Public Library, 2600 Central Blvd., Brownsville, Texas, 78521 and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposal may be submitted to Lawrence R. Smith, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on December 22, 1997.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

No statutes, articles, or codes are affected by these proposed amendments.

§28.90. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the department may authorize the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) to issue permits for the movement of oversize or overweight vehicles carrying non divisible cargo on State Highway 48/State Highway 4 between the Gateway International Bridge and the entrance to the Port of Brownsville. This subchapter sets forth the requirements and procedures applicable to the issuance of permits by the Port of Brownsville for the movement of oversize and overweight vehicles.

§28.91. Responsibilities.

(a) Surety bond. The Port of Brownsville shall post a surety bond in the amount of $500,000 for the purpose of reimbursing the department for actual maintenance costs of State Highway 48/State Highway 4 in the event that sufficient revenue is not collected from permits issued under this subchapter.

(b) Transmission of permits. All permits issued by the Port of Brownsville shall be provided electronically to the department at the time of issuance to ensure accessibility by law enforcement.

(c) Training. The Port of Brownsville shall secure any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training upon request by the Port of Brownsville.

(d) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter which the Port of Brownsville must comply with for the purpose of revenue collections and any payment made to the department under subsection (h) of this section.

(e) Audits. The department may conduct audits semi-annually or upon direction by the executive director of all Port of Brownsville permit issuance activities. In order to insure compliance, audits will at a minimum include a review of all permits issued, financial transaction records related to permit issuance, review of vehicle scale weight tickets and monitoring of personnel issuing permits under this subchapter.

(f) Revocation of authority to issue permits. If the department determines as a result of an audit that the Port of Brownsville is not complying with this subchapter, the executive director may revoke the Port of Brownsville's authority to issue permits.

(1) Upon notification that its authority to issue permits under this subchapter has been revoked, the Port of Brownsville may appeal the revocation to the commission in writing.

(2) In cases where a revocation is being appealed, the Port of Brownsville's authority to issue permits under this subchapter shall remain in effect until the commission makes a final decision regarding the appeal.

(g) Fees. Fees collected under this subchapter shall be used solely to provide funds for the payments provided for under Transportation Code, §623.213, less administrative costs.

(1) The permit fee shall not exceed $80 per trip. The Port of Brownsville may retain up to 10% of such permit fees for administrative costs, and the balance of the permit fees shall be used to make payments to the department for maintenance of State Highway 48/State Highway 4.

(2) The Port of Brownsville may issue a permit and collect a fee for any load exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapters B and C, originating at the Gateway International Bridge traveling on State Highway 48/State Highway 4 to the Port of Brownsville or originating at the Port of Brownsville traveling on State Highway 48/State Highway 4 to the Gateway International Bridge.

(h) Maintenance Contract. The Port of Brownsville shall enter into a maintenance contract with the department for the maintenance of State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville.

(1) Maintenance shall provide for a system of payments from the Port of Brownsville to the department for all maintenance costs expended by the department to maintain State Highway 48/State Highway 4 to the current level of service or pavement conditions. Maintenance shall include, but is not limited to, routine maintenance, preventative maintenance, and total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service for State Highway 48/State Highway 4.

(2) The Port of Brownsville may make direct restitution to the department for actual maintenance costs from this fund in lieu of the department filing against the surety bond described in subsection (a) of this section, in the event that sufficient revenue is not collected.

§28.92. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

(1) the name of the applicant;

(2) date of issuance;

(3) signature of the director of the Port of Brownsville;

(4) a statement of the kind of cargo being transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the kind and weight of each commodity to be transported, not to exceed loaded dimensions of 12' wide, 15'6" high, 110' long or 125,000 pounds gross weight;

(7) statement of any condition on which the permit is issued;

(8) a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville;

(9) the name of the driver of the vehicle in which the cargo is to be transported;

(10) the location where the cargo was loaded; and

(11) the name of the specific Port of Brownsville employee issuing the permit.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the permit.

(C) A permittee may not transport an over dimension or overweight load with a voided permit.

(2) Payment of permit fee. The Port of Brownsville may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle – 25,000 pounds;

(B) two axle group – 46,000 pounds;

(C) three axle group – 60,000 pounds;

(D) four axle group – 70,000 pounds;

(E) five axle group – 81,400 pounds;

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the department for an oversize or overweight permit in accordance with §28.11 of this title (relating to Permit Issuance Requirements and Procedures).

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours, as defined by Transportation Code, §541.401(1); however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) The Port of Brownsville shall install truck scales, certified by the Texas Department of Agriculture, and capable of determining gross vehicle weights and individual axle loads for any vehicle issued a permit by the Port of Brownsville for the purpose of ensuring the accuracy of the permit.

(2) A valid permit and certified weight ticket must be presented to the gate authorities before the permitted vehicle shall be allowed to exit or enter the port.

(3) A copy of the certified weight ticket shall be retained by the Port of Brownsville and become a part of the official permit record subject to inspection by department personnel or Texas Department of Public Safety personnel.

(4) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued. The Port of Brownsville shall maintain records relative to this subchapter, which are subject to audit by department personnel.

(5) Permits issued by the Port of Brownsville shall be in a form prescribed by the department.

(6) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

(7) This subchapter expires March 1, 2001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on Novemeber 7, 1997.

TRD-9714846
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 22, 1997
For further information, please call: (512) 463-8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §§9.20-9.27

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed repeals §§9.20-9.27, which appeared in the May 9, 1997, issue of the *Texas Register* (22 TexReg 4046).

Issued in Austin, Texas, on November 4, 1997.

TRD–9714598
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: November 4, 1997
For further information, please call: (512) 463–7008

♦ ♦ ♦

16 TAC §§9.20-9.22, 9.24–9.26, 9.29

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed new and amended §§9.20-9.22, 9.24-9.26, 9.29, which appeared in the May 9, 1997, issue of the *Texas Register* (22 TexReg 4046).

Issued in Austin, Texas, on November 4, 1997.

TRD–9714599
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: November 4, 1997
For further information, please call: (512) 463–7008

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 116. State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification

Subchapter A. Definitions

30 TAC §§116.10, 116.11, 116.14

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.10, 116.11, and 116.14, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714859
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

♦ ♦ ♦

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

Subchapter A. Definitions

30 TAC §116.12

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed repeal to §116.12, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714868
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Chapter 116. State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification

Subchapter B. New Source Review Permits

Permit Application

30 TAC §§116.109–116.112, 116.114–116.118

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments and new section to §§116.109–116.112, 116.114–116.118, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714860
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Compliance History

30 TAC §§116.120–116.126

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.120–116.126, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714861
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Public Notification and Comment Procedures

30 TAC §§116.130–116.134, 116.136, 116.137

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.130–116.134, 116.136, and 116.137, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714862
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Permit Fees

30 TAC §§116.140, 116.141, 116.143

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.140, 116.141, and 116.143, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

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TRD-9714863
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

Subchapter B. New Source Review Permits

Nonattainment Permits

30 TAC §116.150, §116.151

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed repeals to §116.150 and §116.151, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714869
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Prevention of Significant Deterioration Review

30 TAC §§116.160 –116.163

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed repeals to §§116.160 –116.163, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714870
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Emission Reductions: Offsets

30 TAC §§116.170, 116.174, 116.75

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed repeals to §§116.170, 116.174, and 116.75, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714871
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Chapter 116. State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification

Subchapter C [D] Permit Renewals

30 TAC §§116.310–116.314

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.310–116.314, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

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TRD-9714864
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter D [E] Emergency Orders

30 TAC §§116.410–116.413, 116.415–116.419

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments and new section to §§116.410–116.413, 116.415–116.419, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714865
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter E[F] Standard Permits

30 TAC §§116.610, 116.611, 116.614, 116.615, 116.617, 116.620, 116.621

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.610, 116.611, 116.614, 116.615, 116.617, 116.620, and 116.621 which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

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TRD-9714866
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1966

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Subchapter F[G] Flexible Permits

30 TAC §§116.710, 116.711, 116.714, 116.715, 116.718, 116.721, 116.750, 116.760

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed amendments to §§116.710, 116.711, 116.714, 116.715, 116.718, 116.721, 116.750, and 116.760 which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8331).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714867
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Chapter 126. Federal New Source Review Requirements for Control of Air Pollution

Subchapter A. Definitions

30 TAC §§126.10–126.12

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.10–126.12, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714872
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter B. New Source Review Application and Requirements

30 TAC §§126.109–126.113

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.109–126.113, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

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TRD-9714873

Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Compliance History

30 TAC §§126.120–126.126

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.120–126.126, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

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TRD-9714874
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter C. Public Notification and Comment

30 TAC §§126.130–126.134, 126.136, 126.137

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.130–126.134, 126.136, and 126.137, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

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TRD-9714875
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter D. Nonattainment Review

30 TAC §126.150, §126.151

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §126.150, and §126.151, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714876
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter E. Prevention of Significant Deterioration Review

30 TAC §§126.160–126.163

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.160–126.163, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714877
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter F. Emission Reductions: Offsets

30 TAC §§126.170–126.172

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.170–126.172, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714878
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

♦ ♦ ♦

Subchapter G. Permit Renewals

30 TAC §§126.310–126.314

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.310–126.314, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714879
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

♦ ♦ ♦

Subchapter H. Emergency Orders

30 TAC §§126.410–126.419

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.410–126.419, which appeared in

the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714880
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter I. Potential-to-Emit Limitations

30 TAC §126.510

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new section to §126.510, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714881
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter J. Standard Permits

30 TAC §§126.610, 126.611, 126.614, 126.615, 126.617

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.610, 126.611, 126.614, 126.615, and 126.617, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714882
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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Subchapter K. Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))

30 TAC §§126.710–126.713

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new sections to §§126.710–126.713, which appeared in the August 22, 1997, issue of the *Texas Register* (22 TexReg 8356).

Issued in Austin, Texas, on November 5, 1997.

TRD-9714883
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 7, 1997
For further information, please call: (512) 239–1966

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 148. Facility Licensure

Subchapter A. Licensure Information

40 TAC §148.61

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption the proposed amendment §148.61, which appeared in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9650).

Issued in Austin, Texas, on November 5, 1997.

TRD–9714656
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: November 5, 1997
For further information, please call: (512) 349-6609

♦ ♦ ♦

Chapter 150. Counselor Licensure

40 TAC §§150.10, 150.33, 150.52

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption the proposed amendment §§150.10, 150.33, and 150.52, which appeared in the August 8, 1997, issue of the *Texas Register* (22 TexReg 7345).

Issued in Austin, Texas, on November 5, 1997.

TRD–9714658
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: November 5, 1997
For further information, please call: (512) 349-6609

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 43. Tuberculosis

Subchapter C. Eradication of Tuberculosis in Cervidae

4 TAC §43.20

The Texas Animal Health Commission adopts an amendment to §43.20, concerning definitions relating to eradication of tuberculosis in cervidae (accredited herd; designated tuberculosis epidemiologist; ELISA test; individual herd plan; monitored herd; and surveyed herd), with changes to the proposed text as published in the July 18, 1997, issue of the *Texas Register* (22 TexReg 6724).

The amendment is being adopted to bring TAHC regulations in compliance with federal standards.

No comments were received regarding this adoption.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, Subchapter C, §§161.041 and 161.046 which authorize the Commission to enact rules to eradicate tuberculosis, including rules concerning testing, movement, inspection, and treatment.

§43.20. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Accredited Herd - A herd that has passed at least three consecutive official tuberculosis tests of all eligible animals conducted at nine to 15 month intervals, has no evidence of bovine tuberculosis, and meets the requirements of the UM&R.

Designated Tuberculosis Epidemiologist (DTE) - An epidemiologist who has demonstrated the knowledge and ability to perform the functions specified by the Bovine Tuberculosis Eradication Uniform Methods and Rules. The DTE must be selected jointly by the cooperating State Animal Health Official, the Area Veterinarian in Charge, and the Regional Epidemiologist. The National Animal Health Programs staff must concur in the appointment. The DTE has the responsibility to determine the scope of epidemiological investigations, assist in development of individual herd plans, and to coordinate disease surveillance and eradication programs within their geographic area of responsibility. The DTE has authority to make independent decisions concerning the use and interpretation of diagnostic tests and management of affected herds when those actions are supported by sound disease eradication principles.

ELISA Test - The enzyme linked immunosorbant assay component of the BTB Test is recognized as a presumptive test for Bovine Tuberculosis in Cervidae. The ELISA test may be used to meet intrastate change of ownership test requirements.

Individual Herd Plan - A written disease management plan that is designed by the herd owner and/or other herd representative and a State or Federal veterinarian to eradicate tuberculosis from an affected herd while reducing human exposure to the disease. The herd plan will include appropriate herd test frequencies, tests to be employed, and any additional disease or herd management practices deemed necessary to eradicate tuberculosis from the herd in an efficient and effective manner. The plan must be approved by the State Animal Health Official and the Area Veterinarian in Charge, and have the concurrence of the Regional or Designated Tuberculosis Epidemiologist.

Monitored Herd - A herd on which identification records are maintained on animals over one year of age slaughtered and inspected for tuberculosis at an approved State/Federal slaughter facility or an approved laboratory, and animals tested negative for tuberculosis in accordance with the requirements for interstate movement specified in the Tuberculosis Eradication in Cervidae Uniform Methods and Rules. The initial qualifying total herd size is the annual average of animals one year of age or older during the initial qualifying period, which period shall not exceed three years. The combined number of slaughtered or tested animals in the sample must be evenly distributed over a three year period, and no less than half of the qualifying animals must be slaughter inspected. The rate to detect infection at a two percent prevalence level with 95 percent confidence would require a maximum number of 178 animals.

Figure 1: 4 TAC 43.20, Appendix 1 and 2.

Surveyed Herd - A cervid herd in which surveillance records are maintained on all animals over one year of age that are surveyed for evidence of bovine tuberculosis by routine post mortem inspection at an approved state/federal slaughter facility, or approved diagnostic laboratory, or routine tuberculosis tests performed by a designated accredited veterinarian or by other appropriate surveillance methods approved by a representative of the TAHC.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714568
Terry Beals, DVM

Executive Director
Texas Animal Health Commission
Effective date: October 1, 1997
Proposal publication date: July 18, 1997
For further information, please call: (512) 719-0714

♦ ♦ ♦

4 TAC §43.21

The Texas Animal Health Commission adopts an amendment to §43.2, concerning general requirements relating to eradication of tuberculosis in cervidae (disposition of tuberculin-responding cervidae; retest standards for high-risk herds), with changes to the proposed text as published in the July 18, 1997, issue of the *Texas Register* (22 TexReg 6725).

The amendment is being adopted to bring TAHC regulations in compliance with federal standards.

No comments were received regarding this amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, Subchapter C, §§161.041 and 161.046 which authorize the Commission to enact rules to eradicate tuberculosis, including rules concerning testing, movement, inspection, and treatment.

§43.21. General Requirements.

(a)-(c) (No change.)

(d) Disposition of Tuberculin-Responding Cervidae.

(1)-(2) (No change.)

(3) Suspects to the comparative cervical test or equivocal to the BTB shall remain under quarantine until:

(A) comparative cervical suspects are retested by the CCT after 90 days; or

(B) BTB equivocal animals are retested by the BTB test optimally before 60 days following the SCT injection; or

(C) such animals are shipped under permit directly to a slaughter facility under state or federal inspection, or necropsied. If such animals are found without evidence of M. bovis infection by histopathology and cultured (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), they shall be considered negative for tuberculosis.

(4) An animal meeting the suspect criteria on two successive CCT or two BTB equivocal tests followed by one suspect CCT test shall be classified as a reactor and be identified as such. The testing veterinarian must justify exceptions in writing and have the concurrence of State or Federal animal health personnel.

(e)-(g) (No change.)

(h) Retest Schedules for High Risk Herds.

(1) In herds with a history of lesions compatible or suggestive for tuberculosis by histopathology, two complete annual herd tests shall be given after release from quarantine. Herds with a bacteriologic isolation of a Mycobacteria species other than M.bovis should be considered negative for bovine tuberculosis with no further testing requirements.

(2) In a newly assembled herd on premises where a tuberculosis herd has been depopulated, two annual herd tests shall be applied to all animals. The first test must be approximately six months after assembly of the new herd. If the premises are vacated for over one year, these requirements may be waived.

(3) Exposed animals previously sold from known infected herds shall be depopulated if possible, or tested with the SCT by State or Federal veterinarians. The BTB test may be used simultaneously with the SCT as an additional diagnostic test. All animals positive to either test shall be classified as reactors.

(A) If bovine tuberculosis is confirmed in the exposed animal(s), the remainder of the receiving herd shall be classified as an infected herd and handled according to subsection (f)(2) of this section.

(B) If negative to the test, the exposed animal(s) will subsequently be handled as if a part of the infected herd of origin for purposes of testing, quarantine release, and the five annual high-risk tests. The remainder of the herd shall be tested at the time of the initial investigation and retested in one year with the SCT. Supplemental diagnostic tests may be used if needed.

(4) (No change.)

(i) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714569
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Effective date: October 1, 1997
Proposal publication date: July 18, 1997
For further information, please call: (512) 719-0714

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4 TAC §43.22

The Texas Animal Health Commission adopts an amendment to §43.22, concerning herd status plans for eradication of tuberculosis in cervidae, with changes to the proposed text as published in the July 15, 1997, issue of the *Texas Register* (22 TexReg 6519).

The amendment is being proposed to establish standards for accredited, monitored, qualified, and surveyed herds.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, Subchapter C, §§61.041 and 161.046 which authorizes the Commission to enact rules to eradicate tuberculosis, including rules concerning testing, movement, inspection, and treatment.

§43.22. Herd Status Plans For Cervidae.

(a) Accredited Herd Plan.

(1) Animals to be tested. Testing of herds for accreditation or reaccreditation shall include all Cervidae and all other hoof stock over 12 months of age and animals under 12 months of age that are not natural additions, except that animals under 12 months of age that are not natural additions that were born in and originate from an accredited herd will not need to be tested.

(2) Qualifying standards. To meet the requirements for accredited herd status, the herd must pass at least three consecutive official tests for tuberculosis at nine to 15 month intervals with no evidence of bovine tuberculosis disclosed. Herds meeting these standards shall be issued a certificate by the Commission.

(3)-(4) (No Change.)

(b) Monitored Herd Plan.

(1) Requirements. Identification records must be maintained on animals over one year of age slaughtered, inspected, and found negative for tuberculosis at an approved slaughter facility or at an approved diagnostic laboratory. Such records may also include animals that have been tested negative for tuberculosis in accordance with the requirements for interstate movement. A monitored herd must identify animals over one year of age at slaughter, and animals tested negative for interstate movement at a rate to detect infection at a two percent prevalence level with 95 percent confidence evenly distributed over a three year period. No less than half of the qualifying animals must be slaughter inspected. This rate would require a maximum of 178 animals. The qualifying total herd size is the annual average of herd members over 1 year of age maintained during the initial test period, which period shall not exceed three years.
Figure 1: 4 TAC §43.22(b)(1) Appendix 1 and 2

(2) Maintenance of Monitored Herd Status. For monitored herd status to be renewed, an annual report shall be submitted by the person, firm or corporation responsible for the management of the herd to the Commission prior to the anniversary date. This report shall give the number of animals currently in the herd and the number of animals over 1 year of age, identified and slaughtered at a State/Federal approved slaughter facility and animals tested negative for tuberculosis in accordance with the requirements for interstate movement during the preceding year. The number of slaughter inspections and animals tuberculosis tested in accordance with the requirements for interstate movements reported in any given year must be at least 25.0% of the number required to initially qualify a herd of this size for monitored herd status, provided, however, that during each consecutive three year period, 100 percent of the initial qualifying total shall be achieved.

(3) Additions. Herd additions must originate from one of the following:

(A) an Accredited Herd.

(B) a Qualified or Monitored Herd. Provided, the individual animals for addition were negative to a tuberculosis test conducted within 90 days prior to entry.

(C) a herd not meeting the requirements of subparagraph (A) or (B) of this paragraph. Individual animals for addition must be isolated from other members of the herd of origin, and pass two negative official tests for tuberculosis, conducted at least 90 days apart, provided that the second test was conducted within 90 days prior to movement to the premises of the monitored herd. The additions must be kept in isolation from all members of the monitored herd until negative to an official tuberculosis test conducted at least 90 days following the date of entry. Animals added under this paragraph shall not receive monitored herd status for sale purposes until they are negative to a retest 90 days after entry.

(c) Qualified Herd Plan for Cervidae.

(1) Animals to be tested. Testing of herds for qualified herd status shall include all cervidae over 12 months of age and any animals under 12 months of age that are not natural additions, except such animals originating from accredited, qualified, or monitored herds.

(2) Qualifying Standards. To meet the requirements for qualified herd status, the herd must pass one official test for tuberculosis, within a seven month period with no evidence of bovine tuberculosis disclosed. The qualified herd status remains in effect for 12 months following the qualifying test.

(3) Additions. Herd additions must originate directly from one of the following:

(A) an accredited herd,

(B) a monitored or qualified herd, provided that the individual animals for addition were negative to an official tuberculosis test conducted within 90 days prior to entry,

(C) a herd not meeting the requirements of subparagraphs (A) or (B) of this paragraph. Individual animals for addition must be isolated from other members of the herd of origin and must have negative results to two official tests for tuberculosis, conducted at least 90 days prior to movement to the premises of the qualified herd. The additions must be kept in isolation from all members of the qualified herd until they are negative to an official tuberculosis test conducted at least 90 days following the date of entry.

(4) Animals added under paragraph (3)(C) of this subsection shall not receive qualified herd status for sale or movement purposes until they are negative to a retest 90 days after entry.

(d) Surveyed Herd.

(1) Requirements - Surveillance records must be maintained on all animals over one year of age harvested and inspected or tested without evidence of bovine tuberculosis:

(A) at an approved slaughter facility with state/federal meat inspection, approved diagnostic laboratory, and/or

(B) routine tuberculosis testing of individual animals or consignments performed by a designated accredited veterinarian, and/or

(C) other appropriate methods of surveillance approved by a representative of the TAHC.

(2)-(3) (No Change.)

(e) Status of newly assembled herds. A newly assembled herd shall assume the herd status of the herd from which the animals originated. If the herd is assembled from more than one herd, it shall assume the status of the originating herd with the lowest status. A newly assembled herd shall also assume the testing schedule of the herd which status it assumes. These animals must have no exposure to cervidae from herds of lesser status than the herd of origin which is determining the status of the newly assembled herd.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714570
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Effective date: October 1, 1997
Proposal publication date: July 15, 1997
For further information, please call: (512) 719-0714

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4 TAC §43.23

The Texas Animal Health Commission adopts an amendment to §43.23, concerning tuberculosis testing requirements for cervidae entering Texas, without changes to the proposed text

as published in the July 18, 1997, issue of the *Texas Register* (22 TexReg 6726).

The amendment is being adopted to establish standards for accredited, monitored, qualified, and surveyed herds.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, Subchapter C, §§161.041 and 161.046 which authorize the Commission to enact rules to eradicate tuberculosis, including rules concerning testing, movement, inspection, and treatment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714571
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Effective date: October 1, 1997
Proposal publication date: July 18, 1997
For further information, please call: (512) 719-0714

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

Records Retention Scheduling

13 TAC §6.10

The Texas State Library and Archives Commission adopts an amendment to §6.10, concerning a revised, second edition of the Texas State Records Retention Schedule, with changes to the proposed text as published in the August 19, 1997 issue of the *Texas Register* (22 TexReg 7969). As the result of public comment, minor changes have been made to the schedule adopted under this rule.

The Texas State Library and Archives Commission, under authority of Government Code, §441,185(f), may establish mandatory minimum retention periods for any records of state agencies that are not established by another federal or state law, regulation, or rule of court. The commission has revised the Texas State Records Retention Schedule based on comment from its users, changes to state or federal laws or regulations, and a re-appraisal of the role and function of certain records maintained by state agencies since the adoption of the first edition of the schedule. The schedule has been extensively revised to make it easier to use by state agencies.

State agencies are required under Government Code, §441.185 to submit records retention schedules to the state records administrator for approval by the director and librarian and the state auditor. The adoption of the second edition of the Texas State Records Retention Schedule will simplify the means by which state agencies fulfill their statutory duties.

The commission received one comment concerning adoption of the rule. A commenter pointed out two errors in internal cross-references in the schedule adopted under this amended rule. The commission agrees that cross-references made to other item numbers at item numbers 1.1.028 and 4.5.004 in the schedule were incorrect and they have been corrected.

The following changes have been made to the schedule to reflect new or amended state laws that took effect subsequent to the proposal of the rule.

The citation to Government Code, §441.037 on page v of the schedule is corrected to Government Code, §441.185 to reflect the enactment of a new state records law, effective September 1, 1997.

The term "records administrator" on page vii and "records administrators" on page x and at item numbers 1.1.057 and 2.1.002 are changed to "records management officer" and "records management officers" respectively to reflect the new title of state agency records managers as defined in Government Code, §441.180, effective September 1, 1997.

Two references to the Secretary of State at item number 1.1.053 in the schedule are changed to the Texas Ethics Commission to reflect the transfer of the administration and enforcement of Government Code, Chapter 2004 (Representation Before State Agencies) to that commission as of September 1, 1997.

The commission received written comment from the Employees Retirement System of Texas.

The amendment, proposed under the subsequently repealed Government Code, §441.037 and §441.054, is adopted under Government Code, § 441.185(f), which took effect September 1, 1997, and which permits the commission to adopt minimum retention periods for state records.

§6.10. Record Retention Schedules.

The retention periods for and disposition of certain state records must be in accordance with the Texas State Records Retention Schedule (2nd Edition).
FIGURE 1: 13 TAC §6.10.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714580
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: January 1, 1998
Proposal publication date: August 19, 1997
For further information, please call: (512) 463–5436

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.64

The Railroad Commission of Texas adopts the repeal of §3.64, relating to out-of-state sale of gas produced from publicly owned

and leased minerals, without changes to the version published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8815). Although the Texas Administrative Code section number is 3.64, the rule is commonly known as "Statewide Rule 69." The repeal is adopted to implement Senate Bill 1487 (S.B. 1487) enacted by the 75th legislature and effective September 1, 1997. S.B. 1487 repeals §§52.291 through 52.294 and 52.296 of the Texas Natural Resources Code. The repeal of these sections necessitates the repeal of Statewide Rule 69.

No comments were received regarding the adopted repeal.

The commission adopts the repeal pursuant to Texas Natural Resources Code, §§81.052, 85.042, 85.201, and 86.042, which authorize the commission to prevent waste of oil and gas and to protect correlative rights.

Texas Natural Resources Code, §§52.29-52.294 and 52.296, are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714578
Mary Ross McDonald
Deputy General Counsel, Office of the General Counsel
Railroad Commission of Texas
Effective date: September 5, 1997
Proposal publication date: November 25, 1997
For further information, please call: (512) 463-7008

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Records and Reports

16 TAC §23.11

The Public Utility Commission of Texas adopts amendments to §23.11, relating to General Reports, with changes to the proposed text as published in the August 26, 1997 issue of the *Texas Register* (22 TexReg 8493). The amendments will clarify procedural aspects of the equal opportunity reporting requirement. These amendments were adopted in Project Number 17295.

The commission received written comments on the proposed amendments from: El Paso Electric Company (EPEC); the Lower Colorado River Authority (LCRA); and Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company, the Texas electric utility operating companies of Central and South West Corporation (CSW).

EPEC suggested that the proposed language of §23.11(f)(2) be changed to clarify that the Texas-based numbers reported by multi-jurisdictional utilities should be based on the totals already reported to other governmental agencies. The commission agrees with EPEC's suggestion and amends §23.11(f)(2) accordingly.

LCRA construed the proposed language of §23.11(q)(8) to impose a reporting burden on LCRA greater than that imposed by the U.S. Equal Employment Opportunity Commission (EEOC). LCRA states that as a political jurisdiction with 100 or more employees, it is required to file EEOC Form 164 by September 30 of every odd- numbered year. LCRA asserts that the proposed amendment to §23.11(q)(8) would require it to either generate a new report or request a waiver from the commission.

The commission disagrees with LCRA's reading of the proposed amendment. The proposal to change the filing deadline in §23.11(q)(8) does not affect the obligation to file that is imposed by §23.11(f). In even-numbered years, if LCRA files no report with the EEOC, or other governmental agencies, then no report is required for that year's data. For example, a report filed with the EEOC on September 30, 1997 should be filed with the commission by February 15, 1998. If LCRA does not file a report in calendar year 1998, no report is due to the commission by February 15, 1999. Because of possible confusion highlighted by LCRA's comments, the commission amends §23.11(q)(8) to clarify the filing obligation and deadline.

CSW commented that it has implemented software changes that will enable it to comply with the proposed amendments.

The amendments are adopted under the Public Utility Regulatory Act, 75th Legislature, Regular Session, chapter 166, §1, 1997 Texas Session Law Service 732 (Vernon) (to be codified as Texas Utilities Code Annotated §14.002) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

§23.11. General Reports.

(a)-(e) (No change.)

(f) Equal opportunity reports.

(1) The term "minority group members," when used within this subsection, shall include only members of the following groups:

(A) African-Americans;

(B) American Indians;

(C) Asian-Americans;

(D) Hispanic-Americans and other Americans of Hispanic origin; and

(E) women.

(2) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional utility does not indicate Texas- specific numbers, the utility shall also prepare, and file with the commission a form, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies, indicating Texas-specific numbers. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating thereto, if any.

(3) (No change.)

(4) Any utility filing with the commission any documents described in paragraphs (2) and (3) of this subsection shall file two copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(5) On May 1 of each year, the commission shall submit a report concerning the filed reports to the Texas legislature.

(g)-(p) (No change.)

(q) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this section.

(1)-(7) (No change.)

(8) A utility that files a report with local, state or federal governmental agencies and that is required by subsection (f) of this section to file such report with the commission must file the report by February 15 of the year it is filed with the local, state or federal agencies. If the report is filed with local, state or federal agencies after February 15, the utility shall file the report with the commission by February 15 of the next year.

(9) (No change.)

(r) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714664
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 25, 1997
Proposal publication date: August 26, 1997
For further information, please call: (512) 936-7308

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter H. Approval of Distance Learning for Public Colleges and Universities

19 TAC §§5.151, 5.154, 5.155

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 5, Subchapter H, §5.151, §5.154, §5.155 concerning Approval of Distance Learning for Public Colleges and Universities without changes to the proposed text as published in the August 26, 1997 issue of the *Texas Register* (22 TexReg 8465).

Comments were received from the University of Texas System, Texas Tech University, Texas A & M University and Stephen F. Austin State University. Some of schools recommended that we redefine "courses offered to individuals" to allow students to meet in group settings such as libraries also to expand the definition of "program" to differentiate between credit and non-credit programs and eliminate the 20% growth rule. The agency did not agree with these recommendations. Another recommendation was made to look at the concurrence process to provide guidelines under which institutions could object to courses being offered in their territory. The agency did not agree with the recommendation; they did not think new concurrence guidelines were necessary. There was a request for clarification of "programs offered via distance learning" to include if periodic visits to campus would be considered in determining if a course is on or off-campus. Recommendations were made to edit references to coincide with terms described and the agency agreed and made changes accordingly. Also, recommendations to clarify conditions under which exemptions may be granted and clarify conditions under which a large block of courses which did not constitute a degree program could be offered. The agency disagreed and felt the wording was clear.

The repeal of the rules is adopted under Texas Education Code, Section 61.051(j) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714726
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Corrdinating Board
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For further information, please call: (512) 483–6162

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19 TAC §§5.151, 5.154, 5.155

The Texas Higher Education Coordinating Board adopts new sections to Chapter 5, Subchapter H, §5.151, §5.154, §5.155 concerning Approval of Distance Learning for Public Colleges and Universities with changes to the proposed text as published in the August 26, 1997 issue of the Texas Register (22 TexReg 8465). The change was made to §5.155.

Comments were received from the University of Texas System, Texas Tech University, Texas A & M University and Stephen F. Austin State University. Some of schools recommended that we redefine "courses offered to individuals" to allow students to meet in group settings such as libraries also to expand the definition of "program" to differentiate between credit and non-credit programs and eliminate the 20% growth rule. The agency did not agree with these recommendations. Another recommendation was made to look at the concurrence process to provide guidelines under which institutions could object to courses being offered in their territory. The agency did not agree with the recommendation; they did not think new concurrence guidelines were necessary. There was a request for clarification of "programs offered via distance learning" to include if periodic visits to campus would be considered in determining if a course is on or off-campus. Recommendations were made to edit references to coincide with terms described and the agency agreed and made changes accordingly. Also, recommendations to clarify conditions under which exemptions may be granted

and clarify conditions under which a large block of courses which did not constitute a degree program could be offered. The agency disagreed and felt the wording was clear.

The new rules are adopted under Texas Education Code, Section 61.051(j) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

§5.155. Annual Plan for Distance Learning.

(a) Unless specifically exempted by the Board, all distance learning instruction taught for credit and which will be reported for formula funding must be submitted for annual review by appropriate higher education Regional Councils or peer institutions as provided in this subchapter. Non-credit adult and continuing education courses offered at a distance by universities and health science centers do not fall under the purview of this Subchapter. The annual review and approval of distance learning credit courses will follow the annual plan procedure described in Sections 5.156, 5.157 and 5.158 of this title (relating to Approval of Distance Learning for Public Colleges and Universities).

(b) An exception to this annual review process is hereby granted for courses delivered exclusively to individuals where instruction is accessed by personal computer, video cassette recorder or combination of the two and delivered to the individual's residence or place of business. Even though exempt from annual review, courses delivered to individuals must be reported in accordance with the Board's uniform reporting system.

(c) The exemption granted in section 5.155(b) of this title (relating to Annual Plan for Distance Learning) does not apply to courses delivered to any setting including schools, military, corporate or other commercial site where a group of two or more students are gathered.

(d) Institutions may enroll students from outside Texas in distance learning courses provided that credit hours generated by such students are not submitted for formula funding. (See section 5.158(a)(4) and section 5.159(b) of this title relating to Approval of Distance Learning for Public Colleges and Universities.)

(e) In addition to Section 5.155(b) of this title (relating to Approval of Distance Learning for Public Colleges and Universities) and upon request from institutions, the Board may exempt from annual review:

(1) courses offered by one public institution on the campus of another public institution,

(2) courses taught on military bases or in correctional institutions,

(3) courses at sites designated by the Board as auxiliary locations;

(4) courses offered as part of approved distance learning degree programs; and

(5) courses pertaining to student teaching, internships, clinical instruction, practica, cooperative education work stations, and field classes (when limited to campus-based students). Instruction offered under all such exemptions, however, must still be reported in accordance with the Board's uniform reporting system and will be subject to monitoring for quality.

(f) If distance learning instruction is provided regularly in an approved cooperative degree program, in a correctional institution, on a military base, or at other sites where an institution needs to utilize resources not normally available on its main campus, the site where the instruction is received may be recognized as an Auxiliary Location by the Board. Auxiliary locations are recognized as having a specific, defined academic mission; expansion beyond the authorized mission requires prior approval of the Board.

(g) In approving Annual Plans, the Commissioner may give preference for the delivery of distance learning courses or degree programs which rely principally upon faculty travel off-campus or out-of-district to the nearest institution willing and able to deliver the instruction.

(h) The Commissioner may approve, as amendments to an institution's Annual Plan, courses submitted not later than two weeks after the beginning of any semester or summer session. The Commissioner shall not approve additional courses in excess of 20 percent of the number of courses previously approved as part of the Annual Plan for the requesting institution, or ten courses, whichever is greater. Such courses must first be submitted for consideration by public and independent institutions in the appropriate Regional Council(s).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§5.152, 5.156–5.159

The Texas Higher Education Coordinating Board adopts amendments to Chapter 5, Subchapter H, §5.152, §5.156, §5.157, §5.158, §5.159 concerning Approval of Distance Learning for Public Colleges and Universities with changes to the proposed text as published in the August 26, 1997 issue of the Texas Register (22 TexReg 8465). The changes were made in §5.152, §5.156, §5.157, and §5.159.

Comments were received from the University of Texas System, Texas Tech University, Texas A & M University and Stephen F. Austin State University. Some of schools recommended that we redefine "courses offered to individuals" to allow students to meet in group settings such as libraries also to expand the definition of "program" to differentiate between credit and non-credit programs and eliminate the 20% growth rule. The agency did not agree with these recommendations. Another recommendation was made to look at the concurrence process to provide guidelines under which institutions could object to courses being offered in their territory. The agency did not agree with the recommendation; they did not think new concurrence guidelines were necessary. There was a request for clarification of "programs offered via distance learning" to include if periodic visits to campus would be considered in determining if a course is on or off-campus. Recommendations were made to edit references to coincide with terms described and the agency agreed and made changes accordingly. Also, recommendations to clarify conditions under which exemptions may be granted and clarify conditions under which a large block of courses

which did not constitute a degree program could be offered. The agency disagreed and felt the wording was clear.

The amendments to the rules are adopted under Texas Education Code, Section 61.051(j) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

§5.152. General Provisions.

(a)-(c) (No Change.)

(d) No degree or certificate program may be offered via distance learning instruction without prior approval of the Board. This applies even if delivery modes or instruction sites or locations are exempt from annual review under these rules. In addition, institutions may not offer through distance learning instruction at any site the number and array of courses that would constitute a degree or certificate program without prior approval by the Board to offer a full program at that site. Courses offered in violation of this provision will be disallowed for formula funding.

(e)-(f) (No Change.)

§5.156. Procedures for Review and Approval of Lower-Division Distance Learning Courses.

(a)-(d) (No Change.)

(e) Procedures for submitting applications to the Board for authorization to offer lower-division distance learning classes are as follows:

(1)-(3) (No Change.)

(4) Distance learning instruction proposed to be offered on a statewide basis must be separately identified. Courses offered exclusively to individuals are automatically authorized for statewide delivery. (See Section 5.151(c) of this title relating to Approval of Distance Learning for Public Colleges and Universities). Such courses must be reported in accordance with the Board's uniform reporting system.

(5)-(6) (No Change.)

(f) During the passage of the year it may be necessary for an institution to request approval of lower-division distance learning activities not submitted as part of its Annual Plan. Such proposed amendments to an Annual Plan must be submitted to affected Regional Councils prior to the teaching of any additional classes. Each Council Chair will forward recommendations to the Commissioner regarding the appropriateness of such instruction. Amendments shall be considered by the Commissioner in accordance with Section 5.155(h) of this title relating to Approval of Distance Learning for Public Colleges and Universities.

§5.157. Procedures for Review and Approval of Upper-Level and Graduate Distance Learning Courses.

(a)-(d) (No Change.)

(e) During the passage of the year it may be necessary for an institution to request approval of courses not submitted as part of its annual plan. The Commissioner shall consider such requests in accordance with Section 5.155(h) of this title relating to Approval of Distance Learning for Public Colleges and Universities if they are accompanied by documentation of discussions with other public and independent institutions in the affected Uniform Service Region concerning the proposed classes.

§5.159 Non-State-Funded Courses.

(a) In-state-non-funded credit courses are governed by the same rules and regulations as regular funded courses; non-state funded credit courses need not be included in the annual plan requests. Requests for authorization to offer non-state-funded credit courses may be submitted for approval as the need arises. Non-credit adult and continuing education courses offered at a distance by universities and health science centers do not fall under the purview of this subchapter.

(b) Out-of-state and foreign courses offered by public universities and health related institutions, for which no state funds are expended, may be taught without prior approval of the Board. However, prior Board approval is required for full degree programs offered under these circumstances. Institutions are expected to ensure that all such instruction meets the quality standards expected of Texas higher education institutions.

(c) Community and technical colleges proposing to offer out-of-state or foreign courses for which no state funds are expended are subject to the provisions of Chapter 9, Subchapter L of this title (relating to Approval of Credit Courses and Programs Not Receiving State Funds Offered at Out-of-State and Foreign Locations).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
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Subchapter K. Private and Out-of-State Public Degree-Granting Institutions Operating in Texas

19 TAC §§5.211–5.222

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 5, Subchapter K, §5.211 - §5.222 concerning Private and Out-of-State Public Degree- Granting Institutions Operating in Texas without changes to the proposed text as published in the August 26, 1997 issue of the *Texas Register* (22 TexReg 8465).

There were no comments received concerning the proposed rules.

The repeal of the rules is adopted under Texas Education Code, Section 61.311 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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19 TAC §§5.211–5.225

The Texas Higher Education Coordinating Board adopts new Chapter 5, Subchapter K, §5.211 - §5.225 concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas with changes to the proposed text as published in the August 26, 1997 issue of the *Texas Register* (22 TexReg 8465). The changes were made to §5.211, §5.212, §5.213, §5.214, and §5.220.

There were no comments received concerning the proposed rules.

The new rules are adopted under Texas Education Code, Section 61.311 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas.

§5.211. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Accreditation standards acceptable to the board–The standards of the recognized accrediting agencies, or, for those institutions exempt under section 5.212(a) of this title (relating to Exemptions), the accrediting agency generally recognized by the appropriate professions.

Agent–A person employed by or representing an institution within or without Texas who solicits any Texas students for enrollment in the institution, or who solicits or accepts payment from the Texas resident for any good or service offered by the institution at any place other than the office or legal place of business of the institution.

Board–The Texas Higher Education Coordinating Board.

Branch campus, extension center, or other off-campus unit –Any institution or part of an institution offering or proposing to offer away from the home campus more than occasional courses or courses leading to the granting of a degree without the necessity for courses to be taken at the main campus.

Commissioner–The commissioner of higher education.

Degree–Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate," "bachelor's," "master's," "doctor's," and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program among Texas institutions of higher education accredited by accrediting agencies recognized by the Coordinating Board.

Educational or Training Establishment – An enterprise offering a course of instruction, education, or training that the establishment does not represent to be applicable to a degree.

Home campus–The headquarters of an institution, such location to be determined as a matter of fact by the commissioner based upon consideration of information such as, but not limited to, the following:

(A) where the institution is chartered;

(B) the site, campus, or city where the principal or chief executive's offices are located;

(C) where the institution conducts the preponderance of its instructional activities; and

(D) any other pertinent and material facts.

Out-of-state public institution of higher education–Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

Person–Any individual, firm, partnership, association, corporation, enterprise, or other private entity or combination thereof.

Private postsecondary educational institution or institution – An educational institution which:

(A) Is not a public junior college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code, section 61.003;

(B) Is incorporated under the laws of this state, or maintains a place of business in this state, or has a representative present in this state, or solicits business in this state; and

(C) Furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or provides or offers to provide credits alleged to be applicable to a degree.

Program of study–Any course or grouping of courses which are alleged to entitle a student to a degree or to credits alleged to be applicable to a degree.

Recognized accrediting agency–The Commission on Colleges, Southern Association of Colleges and Schools; the American Association of Bible Colleges; or the Association of Theological Schools in the United States and Canada.

Representative–Includes a recruiter, agent, tutor, counselor, business agent, instructor, or any other instructional or support personnel.

Subchapter–The Texas Education Code, Title 3, Chapter 61, Subchapter G, as amended, having an effective date of June 21, 1975.

§5.212. Exemptions.

(a) The provisions of this subchapter do not apply to an institution which is fully accredited by a recognized accrediting agency, except that no institution may establish or operate a branch campus, extension center, or other off-campus unit without board approval. However, any private or independent institution of higher education as defined by Texas Education Code, Section 61.003, or any branch campus which was fully and separately accredited as a free-standing institution or was a candidate for separate accreditation as a free-standing institution prior to January 1, 1981 is exempt.

(b) The exemptions provided by subsection (a) of this section apply only to the degree level for which the programs or the institution is accredited or approved, as applicable, and if an institution offers to award a degree at a level for which it is not accredited or approved by the appropriate agency of the state of Texas, the exemption does not apply.

(c) The board may issue an exempt institution a certificate of authorization to grant degrees on request of said institution upon determination by the board that said institution qualifies for exemption under subsection (a) of this section, as limited by subsection (b), of this section. The institution may apply for a certificate of authorization on forms provided by the board upon request.

(d) An exempt institution continues in that status only so long as it maintains accreditation by a recognized accrediting agency or otherwise meets the provisions of subsection (a) of this section.

(e) A new institution may not presume exempt status and offer to award degrees or courses leading to degrees until it has applied for and been granted exempt status by the commissioner.

(f) If the commissioner has reason to revoke the exempt status granted to an institution, he shall notify the institution. The institution will be given 10 days from receipt of that notice to contest the revocation. If after considering the institutions's reply the commissioner continues to hold that the institution no longer merits exempt status, the institution may appeal the commissioner's decision to the board. If the board upholds the commissioner's decision, the institution then must apply for and earn a certificate of authority to offer degrees or degree credit courses in Texas.

§5.213. Administrative Procedures Related to Certification of Nonexempt Institutions.

(a) Designation. The board shall administer the provisions of the Texas Education Code, Title 3, Chapter 61, Subchapter G (the subchapter), in addition to its other duties provided by law. To achieve the purposes of the subchapter, the commissioner may request from any department, division, board, bureau, commission, or other agency of the state, and the same shall provide, such information as will enable the board to exercise properly its powers and perform its duties hereunder.

(b) Authority. The board shall exercise, in addition to the express powers and duties now vested therein by the subchapter and the rules of which this section is a part, authority to administer the rules by appropriate action consistent with Texas law and the board's own policies and procedures.

(c) Jurisdiction. The board will accept applications only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(d) Certification Advisory Council. The board shall appoint a certification advisory council to advise the board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions; assist the commissioner in the study of individual applications for certificates of authority; and help on any other matters related to certification that the board finds appropriate. The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private institutions of higher education in Texas. The members shall be appointed for two year fixed and staggered terms.

(e) Application Fee for Certificates of Authority, Amendments to Certificates of Authority, and Certificates of Registration of an Agent. Each biennium the commissioner shall set an application fee for certificates of authority equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the commissioner, or his designated representatives, and consulting fees for the visiting team members. The commissioner shall also set the fee for an amendment to a certificate of authority and the fee for a certificate of registration of an agent. The commissioner shall report the fees to the board at a quarterly meeting of the board.

(f) Application forms.

(1) The application form for a certificate of authority to offer degrees shall contain, at minimum, the name, address, and telephone number of the institution; purpose of the institution; names of the sponsors or owners of the institution; regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of members of the faculty who will, in fact, teach in the program of study, with the highest degree held by each; a full description of the admission requirements, degree requirements, degree or degrees to be awarded and the course or courses of study prerequisite thereto; and a description of the facilities and equipment utilized by the institution.

(2) The application form for an amendment to an existing certificate of authority to award a new or different degree shall include, at minimum, an outline of the curriculum to be offered, the identification of the degree to be awarded, the qualifications of the faculty involved, anticipated enrollment, financial support expected and its source, and the relation of the new program to the purpose of the institution.

(3) The application form for a certificate of registration for an agent shall include, at minimum, the name, address, and certification status of institution represented; the applicant's full legal name, address, residence, educational background, experience, and evidence of institutional affiliation; and an affidavit from the applicant pledging to fairly represent the institution consistent with the laws of the State of Texas and the certification rules of the board.

(4) The application form for authorization to offer off-campus degree-credit courses in Texas shall contain, at minimum, the name, address, and telephone number of the institution; purpose of the institution; names of the sponsors or owners of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of members of the faculty who will, in fact, teach the courses in Texas, with the highest degree held by each; a full description of the admission requirements, degree requirements, degree or degrees to which the course or courses will apply; and a description of the computer, library, and other facilities that will be utilized by the institution to offer the proposed courses.

(5) The application form for a certificate of authorization shall contain, at minimum, the name, address, and telephone number of the institution; name of recognized accrediting association accrediting the institution; degree levels covered by the accreditation; sites covered by the accreditation; and date accreditation will expire.

(g) Application review.

(1) The commissioner, or his designated representatives, and an ad hoc team of independent consultants, if considered appropriate, will visit the institution and conduct an on-site survey to evaluate the application for a certificate of authority. The visiting team will be composed of people with experience on the faculties or staffs of accredited institutions and who possess knowledge of accreditation standards.

(2) The certification advisory council will review the findings of the visiting team and the response of the institution and submit to the commissioner a recommendation concerning the application.

(3) The commissioner will forward to the board the recommendation of the advisory council with his endorsement or with an alternate recommendation.

(4) Upon approval of the board to award a certificate of authority to an institution, the commissioner will act immediately to prepare and forward the certificate. It shall state, as a minimum, that

the institution is authorized to grant certain degrees, the issue date, and the period for which the certificate is valid.

(5) If the board denies an institution's application for a certificate of authority, the institution will not be eligible to reapply for a period of one year. The subsequent application should show correction of the deficiencies which led to the previous denial. Approval of the new application by the board will return the institution to its status within the eight-year time period for achieving accreditation.

(h) Records.

(1) Institutions authorized to operate in this state will be required to furnish a list of their agents to the board, and to maintain records of students enrolled, credits awarded, and degrees awarded in a manner specified by the board.

(2) In the event any institution now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of said institution shall cause to be filed with the board the original or legible true copies of all such academic records of said institution as may be specified by the board. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study and, as a separate document, the academic record of each former student. In the event it appears to the board that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the board, the board may seek court authority to take possession of such records. The board shall maintain or cause to be maintained a permanent file of such records coming into its possession.

(i) Recognition of accrediting agencies. In seeking to assure standards that are sufficient to protect citizens from fraudulent and substandard operations and to treat all postsecondary educational institutions with equity, both exempt and nonexempt, the board has recognized the Commission of Colleges, Southern Association of Colleges and Schools (SACS) as the accrediting agency for certification. However, the board will consider the recognition of other accrediting agencies provided they can demonstrate they meet all of the criteria listed in paragraphs (1) and (2) of this subsection.

(1) The accrediting agency must be a member of or recognized by the Council on Postsecondary Accreditation or its successor and must be recognized by the United States Department of Education.

(2) The accrediting agency's standards must be at least as comprehensive and rigorous as the standards listed in section 5.214 of this title (relating to Standards for Nonexempt Institutions) and be as rigorously applied.

§5.214. Standards for Nonexempt Institutions.

(a) The decision to grant a certificate of authority to an institution will be based on its compliance with the following 24 standards, priority given to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress following initial approval which would ensure accreditation within the allotted time. The 24 standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by the Commission on Colleges, Southern Association of Colleges and Schools and by specialized accrediting bodies and the several academic and professional societies which have established standards for their members' programs such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1) Qualifications of Institutional Officers. The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study. In particular, the academic administrator shall be qualified by level and area of academic preparation, as well as through appropriate experience, to direct the academic affairs of the institution.

(2) Governing Board. The governing board, consisting of at least five members, must be an active policy-making body and must exercise its authority to ensure that the mission of the institution is carried out. Membership of the governing board of the institution shall be comprised of individuals who represent the institution's constituency, including faculty, students, and supporters. The presiding officer of the board, along with a majority of the other voting members, must have no contractual, employment, or personal or familial financial interest in the institution and derive no financial gain from the operations of the institution.

(3) Distinction of Roles. There shall be sufficient distinction among the roles and personnel of the governing board of the institution, the administration, and faculty to ensure their appropriate separation and independence.

(4) Instructional Assessment. Provisions shall be made for the continual assessment of the educational program, including the evaluation and improvement of instruction.

(5) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study. Each faculty member teaching in an academic associate or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency or a regional accrediting agency with at least 18 graduate semester credit hours in the discipline being taught. Furthermore, at least 25% of coursework in an academic associate or baccalaureate level major shall be taught by faculty members holding doctorates, or other terminal degrees, in the discipline being taught from institutions accredited by a recognized agency or a regional accrediting agency. Each faculty member teaching technical or vocational courses in a vocational associate degree program shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency or a regional accrediting agency and at least three years of direct or closely related experience in the discipline being taught. Each faculty member teaching general education courses in a vocational associate degree program shall meet the requirements for academic associate faculty listed above. Graduate level degree programs shall be taught by faculty holding doctorates, or other terminal degrees, in the discipline being taught from institutions accredited by a recognized agency or a regional accrediting agency.

(6) Faculty Size. There shall be a sufficient number of fulltime teaching faculty resident and accessible to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one full time faculty member in each program. At the graduate level, there shall be at least four full time faculty members in each program.

(7) Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution, provided such courses are appropriate to the level of the institution.

(8) General Education. Each associate or baccalaureate degree program shall contain a general education component consisting of at least 25% of the total hours offered for the program. This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and in basic computer instruction. Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs and leveling courses for graduate programs, may not count toward course requirements for the degree. The applicant institution may arrange for all or part of the general education component to be taught by another institution with the following provisions: the applicant institution's faculty shall design the general education requirement, there shall be a written agreement between the institutions to provide the general education component, at least one-half of the courses shall be offered in organized classes, and the providing institution shall be accredited by a recognized accrediting agency.

(9) Credit for Prior Learning. An institution awarding collegiate credit for prior learning obtained outside a formal degree-granting institution shall establish and adhere to a systematic method for evaluating that prior learning, equating it with course content appropriate to the institution's authorized degree programs, and subject to ongoing review and evaluation by the institution's teaching faculty. Recognized evaluative examinations such as the advanced placement program or the college level examination program may be used. No more than fifteen semester credit hours or twenty-three quarter credit hours in a student's associate or baccalaureate degree program may be based on validated prior learning. No graduate credit for prior learning may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(10) Library. The institution shall have in its possession or direct control and readily available to its students and faculty a sufficient quality and variety of library holdings to support adequately its own curriculum. The holdings shall be catalogued and be readily accessible to students and faculty. The institution shall have adequate library facilities for the library holdings, space for study, and work space for the librarian and library staff. The librarian shall hold a graduate degree in library science from an institution accredited by a recognized accrediting agency or a regional accrediting agency. Arrangements for the use of library materials made with other libraries shall be formalized in writing, the collection shall be validated by the institution to be appropriate for the programs being offered, records of usage by the students shall be kept, and the library shall be reasonably accessible to the students and faculty.

(11) Facilities. The institution shall have adequate space, equipment, instructional materials to provide education of good quality.

(12) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(13) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration, Fifth Edition, or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(14) Academic Freedom and Faculty Security. The institution shall adopt and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion; tenure; and non-renewal or termination of appointments, including for cause, shall be clearly published in a faculty handbook and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document given to that faculty member and a copy retained by the institution.

(15) Academic Records. Adequate records shall be securely maintained by the institution to show attendance, progress, or grades, and to assure that satisfactory guidelines are followed relating to attendance, progress, and performance. Two copies of said records shall be maintained in secure places. Transcripts shall be issued upon the request of the students.

(16) Catalog. The institution shall provide students and other interested persons with a catalog or brochure containing information describing the purpose, length, and objectives of the programs offered by the institution; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein. Any disclosures specified by the board or defined in the rules shall be included. This information shall be provided to prospective students prior to enrollment.

(17) Refund Policy. The institution shall publish and adhere to a fair and equitable cancellation and refund policy.

(18) Credentials. Upon completion, the student shall be given appropriate educational credentials by the institution indicating that the program undertaken has been satisfactorily completed.

(19) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic and personal counseling, career information and planning, placement assistance, and testing services.

(20) Student Handbook. A handbook listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and publish it in the handbook.

(21) Health Services. The institution shall provide an effective program of health services and education reflecting the needs of the students.

(22) Housing. The student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(23) Legal Compliance. The institution shall be maintained and operated in compliance with all ordinances and laws, including rules and regulations adopted pursuant thereto.

(24) Open Representation of Activities. Neither the institution or its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(b) The board may accept as evidence of compliance with the standards established in this section the accreditation of an institution by selected accrediting agencies if the commissioner, or his designated representatives, have participated in the review by such an agency of the institution operating in Texas and concur with the actions of that agency. This option shall not be construed as giving exempt status to an applicant institution so accredited if it has not already been exempted under section 5.212(a) of this title (relating to Exemptions); nor is it to be understood that the board may not require further evidence and make further investigations concerning whether the institution should be authorized to operate in Texas.

§5.220. Prohibitions Applicable to Nonexempt Institutions.

(a) A person may not:

(1) Grant, award, or purport to offer a degree on behalf of a nonexempt institution unless the institution has been issued a certificate of authority to grant the degree by the board in accordance with the provisions of the subchapter;

(2) represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified under section 5.216 of this title (relating to Certificate of Authority To Grant Degrees and Offer Courses at Nonexempt Institutions), and approved by the board;

(3) award an honorary degree on behalf of a private postsecondary educational institution subject to the provisions of the subchapter, unless the institution has been awarded a certificate of authority to award such a degree, and, further, unless the degree shall plainly state on its face that it is honorary;

(4) Use the term "college", "university", "seminary", "school of medicine", "medical school", "health science center", "school of law", "law school", or "law center", its abbreviation, or its foreign cognate in the official name or title of a nonexempt private postsecondary educational institution or describe an institution using any of these terms or a term having a similar meaning unless the institution has been issued a certificate of authority;

(5) Use the term "college", "university", "seminary", "school of medicine", "medical school", "health science center", "school of law", "law school", or "law center", its abbreviation, or its foreign cognate in the official name or title of an educational or training establishment or describe an institution using any of these terms or a term having a similar meaning;

(b) A person operating an institution not exempt from this subchapter that has not been issued a certificate of authority, but is otherwise legally operating, and that has in its official name or title a term protected under subsection (a)(4) and (5) of this section shall remove the protected term from the name or title not later than September 1, 1999 unless the term "college" or "university" was used in the official name or title of the institution before September 1, 1975.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-97014729
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: November 26, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 483–6162

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Subchapter P. Testing and Remediation

19 TAC §§5.311–5.318

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 5, Subchapter P, §5.311 - §5.318 concerning Testing and Remediation without changes to the proposed text as published in the August 26, 1997 issue of the *Texas Register* (22 TexReg 8465).

There were no comments received concerning the proposed rules.

The repeal of the rules is adopted under HB 588, 75th legislative session and Texas Education Code, Section 51.306 and 51.307 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Remediation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714728
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483–6162

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Subchapter P. Testing and Developmental Education

19 TAC §§5.311–5.318

The Texas Higher Education Coordinating Board adopts new sections to Chapter 5, Subchapter P, §5.311 - §5.318 concerning Testing and Developmental Education without changes to the proposed text as published in the August 26, 1997 issue of the *Texas Register* (22 TexReg 8465).

There were no comments received concerning the proposed rules.

The new rules are adopted under HB 588, 75th legislative session and Texas Education Code, Section 51.306 and 51.307 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Developmental Education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483–6162

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Chapter 17. Campus Planning

Subchapter C. Requesting Coordinating Board Endorsement of Real Property Acquisitions

19 TAC §17.65

The Texas Higher Education Coordinating Board adopts amendments to Chapter 17, Subchapter C, §17.65 concerning Requesting Coordinating Board Endorsement of Real Property Acquisitions without changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8830).

There were no comments received concerning the proposed rules.

The amendments to the rules are adopted under Texas Education Code, Section 62.021(b) and HB 2462, 74th Legislative Session which provides the Texas Higher Education Coordinating with the authority to adopt rules concerning Requesting Coordinating Board Endorsement of Real Property Acquisitions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714731
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: November 26, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 483–6162

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Chapter 21. Student Services

Subchapter A. General Provisions

19 TAC §21.5

The Texas Higher Education Coordinating Board adopts amendments to Chapter 21, Subchapter A, §21.5 concerning General Provisions (Refund of Tuition and Fees at Public Community/Junior and Technical Colleges without changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8831).

There were no comments received concerning the proposed rules.

The amendments to the rules are adopted under Texas Education Code, Section 61.061 and Section 130.001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Refund of Tuition and Fees at Public Community/Junior and Technical Colleges.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714732
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Proposal publication date: September 5, 1997
For further information, please call: (512) 483–6162

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Subchapter M. Texas College Work-Study Program

19 TAC §§21.409, 21.410

The Texas Higher Education Coordinating Board adopts amendments to Chapter 21, Subchapter M, §21.409 and §21.410 concerning Texas College Work-Study Program without changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8831).

There were no comments received concerning the proposed rules.

The amendments to the rules are adopted under Texas Education Code, Section 56.077, which provides the Texas Higher Education Coordinating with the authority to adopt rules concerning Texas College Work-Study Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714733
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: November 26, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 483–6162

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Subchapter AA. Reciprocal Educational Exchange Program

19 TAC §§21.901–21.907, 21.909

The Texas Higher Education Coordinating Board adopts amendments to Chapter 21, Subchapter AA, §21.901 - §21.907, and 21.909 concerning Reciprocal Educational Exchange Program with changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8832). The changes were made to §21.901, §21.902, and §21.905.

Comments were received from Texas A & M University raising the issue of whether a limit should be established on the length of time an individual can participate in the program. Placing a time limit on how long a student can benefit from the exchange program was discussed with the Commissioner's Advisory Committee on International Issues. The advisory committee has appointed a subcommittee to examine the issue. At this time, staff is recommending that a time limit of 12 months be added to the criteria of eligible participants. This limit is the same as the limit placed on the National Student Exchange Program, which provides exchange opportunities across the United States for undergraduate students. The Reciprocal Educational Exchange Program is for the purpose of allowing students to study abroad while seeking a degree from a Texas university. If a limit is not placed on the program, it can be used for obtaining a complete degree by foreign students at resident rates. The rule has been changed since the July board meeting to delete faculty and staff as eligible participants. This change is being made to bring the rule into compliance with the law.

The amendments to the rules are being adopted under Texas Education Code, Section 54.060 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Reciprocal Educational Exchange Program.

§21.901. Purpose.

The purpose of the reciprocal educational exchange program is to encourage students of participating institutions to better understand the culture, language, needs and expectations of other nations of the world and the State of Texas.

§21.902. Delegation of Powers and Duties.

Texas Education Code, Section 54.060(c), provides that the Coordinating Board shall establish a program for the exchange of students, between Texas institutions of higher education and institutions in other nations of the world.

§21.905. Eligible Participants.

A person is eligible to participate in the exchange program if he/she:

(1) has been enrolled for one or more semesters at the originating institution,

(2) is a citizen or permanent resident of a participating nation or an individual enrolled in a public institution of higher education in Texas,

(3)-(5) (No Change)

(6) has not participated in the exchange program for more than 12 months.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714734
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Proposal publication date: September 5, 1997
For further information, please call: (512) 483–6162

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Subchapter BB. Pilot Program for Enrolling Students from Mexico

19 TAC §§21.931, 21.932, 21.934, 21.935, 21.938

The Texas Higher Education Coordinating Board adopts amendments to Chapter 21, Subchapter BB, §21.931, §21.932, §21.934, §21.935, §21.938 concerning Pilot Program for Enrolling Students from Mexico with changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8833). The changes were made to §21.935 and §21.938.

There were no comments received concerning the proposed rules.

The amendments to the rules are adopted under Texas Education Code, Section 54.060 and HB 1820, 75th legislative session which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Pilot Program for Enrolling Students from Mexico.

§21.935. Border County Program.

A border county program is an instructional program offered in a county bordering Mexico by any general academic institution in Texas, by a component of the Texas State Technical College System, by Texas A & M University-Kingsville, by Texas A & M University-Corpus Christi or by Texas Southmost College.

§21.938. Numbers of Students Eligible to Participate.

(a) Each border county program institution listed in Section 21.935 may enroll an unlimited number of eligible students.

(b) Each general academic teaching institution or component of the Texas State Technical College System not located in a county immediately adjacent to Mexico, except Texas A & M University-Kingsville and Texas A & M University-Corpus Christi, may enroll up to two (2) eligible students per thousand of the institution's overall enrollment. Institutions with fewer than 5,000 students may enroll up to ten (10) eligible students.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483–6162

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Subchapter II. Educational Aide Exemption Program

19 TAC §§21.1080–21.1091

The Texas Higher Education Coordinating Board adopts Chapter 21, new Subchapter II, §21.1080 - §21.1091 concerning Educational Aide Exemption Program with changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8834). The change was made to §21.1083.

Comments were received from legislators and representatives of the Texas Federation of Teachers. They have expressed concern about the definition used for financial need. As a result of these comments, the definition of financial need has been expanded since the July Board Meeting to allow a student to meet the financial need criterion by using either the federal formula or the student's adjusted gross income.

The amendments to the rules are adopted under Texas Education Code, Section 54.214 and HB 571, 75th legislative session which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Educational Aide Exemption Program.

§21.1083. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Board – The Texas Higher Education Coordinating Board.

Commissioner – The commissioner of higher education, the chief executive officer of the board.

Cost of Attendance– A board-approved estimate of the expenses incurred by a typical financial aid student in attending college. Includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

Financial need – Based on the federal formula, the cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is entitled, or based on adjusted gross annual income for the most recent tax year as follows:

(A) single independent students must have an adjusted gross income of $25,000 or less,

(B) married independent students must have a combined gross income of $35,000 or less, and

(C) dependent students must have an adjusted gross income for the family of $35,000 or less.

Program officer – The individual on a college campus who is designated by the institution's Chief Executive Officer to represent a program described in this subchapter on that campus. Unless otherwise designated by the Chief Executive Officer, the Director of Student Financial Aid shall serve as program officer.

Resident of Texas – A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714737
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483–6162

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Chapter 22. Grant and Scholarship Programs

Subchapter E. Texas New Horizons Scholarship Program

19 TAC §§22.81–22.86

The Texas Higher Education Coordinating Board adopts new Chapter 22, Subchapter E, §22.81 - §22.86 concerning Texas New Horizons Scholarship Program with changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8836). The change is made to the title of the subchapter and §22.84.

There were no comments received concerning the proposed rules.

The amendments to the rules are adopted under Texas Education Code, Section 54.216 and SB 576, 75th legislative session which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Texas New Horizons Scholarship Program.

§22.84. Selection of Recipients.

In the initial selection of recipients, institutions are to give priority consideration to applicants who meet the criteria listed below. The Coordinating Board will advise institutions as to the relative weight to be given each of the criteria. In addition, priority may be given to prior year recipients as long as they continue to meet the eligibility requirements of the program. The selection criteria are:

(1) the applicant's socioeconomic background, which suggests disadvantages in preparing for college, measured in terms of the student's family income relative to the designated poverty level of income and whether or not the family has been receiving some type of welfare assistance;

(2) the relative wealth of the school district in which the student graduated from high school compared to the average wealth of school districts throughout the state;

(3) one or more of the following criteria, as determined by the institution attended by the student:

(A) levels of responsibility demonstrated by the student through work at school, in the community, the family or with an outside job to help support the family while attending high school, as attested to via recommendations from at least two disinterested third parties;

(B) the applicant's performance on standardized tests as compared to the performance of other students with similar socioeconomic backgrounds;

(C) whether the student's parents ever attended college; and,

(D) the applicant's performance on standardized tests compared to the performance of all applicants for an award under this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714736
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: November 26, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 483–6162

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Education, Experience, Educational Programs, Time Periods and Type of License

22 TAC §§535.63, 535.64

The Texas Real Estate Commission adopts amendments to §535.63, concerning education and experience required for a real estate broker license, and to §535.64, concerning education required for a real estate salesperson license, without changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9799). The amendment to §535.63 permits persons licensed within a six year period prior to filing the application to be relicensed without having to complete experience or education requirements imposed on new licensees. The amendment also replaces the term salesman with salesperson as required by House Bill 814, 75th Legislature, and replaces the term certification with renewal as used in the current law.

The amendment to §535.64 permits a person who was licensed as a salesperson within a six-year period prior to filing an application to qualify for a salesperson license without being subject to the core real estate course requirements for original licensing. The amendment also replaces the term salesman with salesperson as required by House Bill 814, 75th Legislature. The amendment further conforms the section with the existing practice of permitting salespersons renewing their licenses to provide documentation of completion of core real estate courses no later than the day their licenses expire.

No comments were received regarding the proposed amendment.

Adoption of the amendments is necessary to make the sections consistent with the current provisions of the agency s enabling legislation and the agency s current procedures for license renewal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714892
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: December 1, 1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 463–3910

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Nonresidents

22 TAC §535.132

The Texas Real Estate Commission (TREC) adopts an amendment to §535.132, concerning nonresidents eligibility for real estate licensure, without changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9800). The amendment permits a nonresident previously licensed in Texas as a real estate broker or salesperson within the six-year period prior to the filing of the application to qualify for specific waivers of examination, experience or core real estate course requirements. Adoption of the amendment is necessary to conform the section with the current provisions of the agency s enabling legislation.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714893
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: December 1, 1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 465–3900

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter A. Advisory Committees

25 TAC §401.8

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §401.8, concerning advisory committees, without changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8840).

The new section establishes the Inpatient Mental Health Services Advisory Committee in accordance with the Texas Health and Safety Code, §571.027. The statute requires the advisory committee to advise the Texas MHMR Board on issues and policies related to the provision of mental health services in private mental hospitals licensed by the Texas Department of Health (TDH) and psychiatric units of general hospitals licensed by TDH; on coordination and communication between TDMHMR, TDH, and these facilities to address consistency between the agencies in interpretation and enforcement of agency policies and other rules; and on training for surveyors or investigators.

No public comment was received on the proposal.

The section is adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers and with the Texas Civil Statutes, Article 6252-33, §5, which requires the adoption of rules stating the purpose, tasks, and reporting mechanism of each committee that advises the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714747
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: November 26, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 206-4516

♦ ♦ ♦

25 TAC §401.9

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §401.9, concerning advisory committees, without changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8841).

The repeal abolishes the Treatment Methods Advisory Committee as allowed by the Texas Health and Safety Code, §571.0065(a).

No public comment was received on the proposed repeal.

The repeal of this section is adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714748
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: November 26, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 206-4516

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Chapter 407. Internal Facilities Management

Lease of TDMHMR Surplus Property

25 TAC §407.120

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §407.120 of Chapter 407, concerning lease of TDMHMR property, with changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9224).

The section describes the procedures for leasing TDMHMR property, which includes approval by the Texas MHMR Board or commissioner, evidence of public benefit, review of bids, and the depositing and use of lease proceeds. The amendments modify language throughout the section for clarification; require advertisement of certain lease proposals in accordance with applicable state law; state what is necessary to evidence sufficient public benefit; and allow the commissioner to authorize certain leases.

Language was added to subsection (c) clarifying that the real property being referenced is *non-surplus* real property. Language was modified in subsection (c)(1)(A) to clarify the parameters by which the board makes a determination of sufficient public benefit to the department or the persons it serves. Clarifying language was added to subsection (d) referencing the service contract to the service contract described in subsection (c)(1)(B). Additionally, minor grammatical modification were made to subsection (b).

No public comment was received on the proposal.

This section is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Texas Health and Safety Code, §533.087, which permits TDMHMR to adopt rules related to leasing, forms, and contracts that will protect the state's interests.

§407.120. Lease of TDMHMR Property.

(a) Leases may only be executed for department property that has been determined to be:

(1) surplus property in accordance with Texas Health and Safety Code, §533.084; or

(2) suitable for lease in accordance with Texas Health and Safety Code, §533.087.

(b) Proposals to lease property that require approval of the Texas Mental Health and Mental Retardation Board (board) are made to the board by the department or by the General Land Office. Except as provided by subsections (c) and (d) of this section, all lease proposal are advertised in accordance with applicable state law. The advertisement summarizes the lease proposal, provides the name and address of a person to whom interested parties may submit bids for consideration by the department, and states where a copy of the proposal and the board's criteria for awarding the lease can be obtained. The department reviews any bids received based upon the published criteria, and may conduct a review of other factors which it deems to be appropriate on any or all bids.

(c) The department may lease non-surplus real property or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) sufficient public benefit will be derived from the lease as evidenced by:

(A) a determination by the board that the department or the persons it serves will benefit from the proposed use of the property in a manner that is of equal or greater value than the value of the waived or reduced rent; or

(B) a service contract between the department and the federal or state agency, unit of local government, or not-for-profit organization, which will be the lessee; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The lease of real property or an improvement to a lessee that is related to the department by a service contract as described in subsection (c)(1)(B) of this section may be authorized by the commissioner if:

(1) the term does not exceed five years; and

(2) the fair market value of the annual rent associated with the property or improvement is less than $50,000.

(e) Prior to the board's award of any lease that will have a term exceeding five years, the board shall be apprised of all bids received.

(f) The department may reject any and all bids.

(g) Proceeds from all leases are deposited to the credit of the department in the Texas capital trust fund and used in accordance with the Texas Health and Safety Code, §533.084(b), unless otherwise provided for by state or federal law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714750
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: November 26, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 206-4516

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Chapter 410. Volunteers Services and Public Information

Subchapter C. Capital Improvements by Citizen Groups

25 TAC §410.103

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §410.103, concerning capital improvements by citizen groups, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9225).

The section describes the definitions of words and terms used in the subchapter. The amendment modifies the definition of "capital improvement."

No public comment was received on the proposal.

The section is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714749
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: November 26, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 12. Independent Review Organizations

The Commissioner of Insurance adopts new Chapter 12 concerning independent review organizations. Sections 12.1, 12.3, 12.4, 12.5, 12.103, 12.106, 12.201, 12.205, 12.206, 12.208, 12.301, 12.302, 12.404, 12.405, 12.501 and 12.502 are adopted with changes to the proposed text as published in the September 5, 1997 issue of the *Texas Register* (22 TexReg 8853). Sections 12.2, 12.101, 12.102, 12.104, 12.105, 12.107 - 12.109, 12.202 - 12.204, 12.207, 12.401 - 12.403 and 12.406 are adopted without changes and will not be republished.

This new chapter is necessary to implement Senate Bill 386, enacted by Acts, 75th Legislature, 1997, and codified at Texas Insurance Code Article 21.58C, effective September 1, 1997. Senate Bill 386 authorized the creation of a new entity known as an independent review organization which is designed to provide an independent avenue of appeal of an adverse determination of medical necessity made by a utilization review agent. This chapter is necessary for the orderly and efficient regulation of these organizations and the procedures by which independent review is effected.

New Article 21.58C provides that patients who have received an adverse determination of medical necessity for requested medical treatment or services from a payor and have unsuccessfully appealed such determination may request, through the utilization review agent making the adverse determination, an independent review of their case by an independent review organization. The statute requires that the independent review organization and the person conducting the independent review have no relationship of any kind with the payor, the utilization review agent, the provider(s) of record, or anyone involved in the initial adverse determination or its appeal. Through this new chapter, the Texas Department of Insurance (department) is setting out standards and rules for the certification, selection, and operation of independent review organizations in this state. This chapter enables independent review organizations to operate in the state and to provide the independent review required for adverse determinations, as envisioned by the statute.

After receiving public comments on the proposed chapter, the department has made the following changes to the chapter. Changes were made to §12.4 to clarify the applicability of the chapter and the entities for which independent review organizations would be performing independent reviews. In §12.5, the definitions section, the definition of adverse determination has

been changed to clarify that this type of determination includes those made on behalf of payors. Based on comments, the definition of screening criteria has been changed to be more specific. The department has added the words "after hours" to §12.103(5) based on comments and for clarification as to when an independent review organization may be contacted. Section 12.103(9) has been changed to delete the word "staff" and include the word "executives," since the submission of staff profiles would be an onerous administrative burden on the independent review organization, and to limit the relationship of entities for which information required by this section must be submitted to those which represent at least 5% of that officer's, director's, or executive's total revenue or which represent a holding or investment worth $100,000 or more. Section 12.103(11) has been deleted as it applies only to utilization review agents. The submission of information regarding compensation arrangements is not appropriate for independent review organizations because there is no incentive based upon the number of services denied; the amount paid to the independent review organization is identical whether the independent review organization recommends the service or not. Section 12.106 has been changed to delete reference to proposed §12.302, which has been deleted from the rules. The department has clarified the language in §12.201(3) and (4).

The department has changed §§12.205(c), (d), (e) and (f), 12.404(a), (b) and (d), 12.405, 12.501 and 12.502(a) to include entities other than utilization review agents as permitted by statute. These changes include the other entities or the term "payor," as appropriate. The sections address the responsibilities of entities that request an independent review, including ensuring that all appropriate parties are properly notified of the assignment of a review to an independent review organization. Provisions in Senate Bill 386 relating to the Civil Practice and Remedies Code (specifically §88.003(a)(2) and (c)) allow a health insurance carrier, HMO, or managed care entity to require a party who has notified them of an impending claim to submit the claim for review by an independent review organization. Section 12.205(c) has been changed, based on comments, to clarify that the department considers the independent review organization to have been timely provided the information when it is actually received by the independent review organization, not when it is placed in the U.S. Mail. Subsection (e) of §12.205 has been changed to clarify that the cost of providing medical information shall be reimbursed by the utilization review agent, as well as by an insurer, HMO or other managed care entity. Section 12.206(a) has been changed to require that notice of determination by an independent review organization be given to a payor. The phrase "as guidelines in making determinations" was deleted from §12.206(d)(2) based on a comment that the screening criteria are not to be used as guidelines for making the decision. The independent reviewer should refer to screening criteria as an aid in the review process but will use his/her professional expertise and judgment to make the decision.

Section 12.206(d)(4) was changed to allow the independent review organization to certify that the reviewer has certified his/her independence in lieu of the certification requirement by the reviewer. Since the reviewer is to be independent and will be conducting reviews for various individuals and entities, it is not appropriate that the specific individual be identified to those persons requesting review. Identification of the specific person conducting the review could result in some form of retaliation against the individual and affect their ability to be independent. The certification will be on a form designed by the department and will be available for inspection any time the department performs an on-site review of the independent review organization.

The department has changed §12.208(a) to specify the minimum information which constitutes personal information and has deleted the phrase "to the extent required by law." The word "payor" was added to §12.208(c) and (d) based on comments, to prevent independent review organizations from publishing data which would identify specific payors. Additionally, the word "physician" was added in (c) to clarify that the involved physician must give written consent prior to publication of any identifying data. Subsection (f) has been changed based on comments to include the words "payors or utilization review agents" after the word "providers." The department has changed the retention period for information generated and obtained by the independent review organization in the course of a review to a period of at least four years in §12.208(h). The department has also deleted language which was vague in §12.208(h), based on comments. The word "payor" was added to §12.208(i) for clarification and to ensure that these requirements apply to a payor's financial data.

Proposed §12.302 regarding on site review by TDI has been deleted in favor of reliance on the department's already existing authority to conduct such inquiries pursuant to Texas Insurance Code Article 1.24, and §12.303 has been renumbered as §12.302. Subsection (e) was changed to clarify that Texas Insurance Code Article 1.10E may also be used to impose sanctions.

Changes have been made to §12.502(b) to require the independent review organization to screen their reviewers for conflicts and on completion of a review to obtain from the reviewer the previously referenced certification of independence. Grammatical changes were made to §§12.1, 12.3, 12.5, and 12.406.

Texas Government Code §2001.030 provides that on adoption of a rule, if requested to do so by an interested person either before adoption or not later than the 30th day after the date of the adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption, including in the statement its reasons for overruling the considerations urged against adoption. One commenter has requested that the department issue such a statement.

The principal reason for this rule's adoption is to ensure the orderly and efficient certification and regulation of a new entity, independent review organizations, which have been authorized by recent legislative changes, by setting forth procedures and requirements for certification and the standards by which such organizations are to review adverse determinations by a utilization review agent. It further sets forth the procedures by which the department will make random assignments to independent review organizations and will enforce the provisions of law and rule. No commenter, including the requester, has urged that the department not adopt this rule, and the statute requires that the commissioner shall promulgate standards and rules for the certification, selection, operation, and enforcement of independent review organizations. Failure to adopt this rule would make effective and efficient regulation more difficult and could result in this type of review being less accessible.

Comments concerning individual parts of this rule, and the reasons why the agency agrees or disagrees, are addressed

in the Summary of Comments and Agency's Response to Comments.

Subchapter A contains general provisions regarding this chapter. The statutory basis for this chapter is set forth in §12.1. Section 12.2 provides for severability of terms or sections of this chapter under certain circumstances. Section 12.3 describes the effect of the rules and §12.4 sets forth the applicability of this chapter. Section 12.5 defines key terms used in this chapter.

Subchapter B contains information regarding the certification of independent review organizations. Sections 12.101 and 12.102 provide information on where to file an application for certification of an independent review organization and how to obtain forms for such application. A list of information required to be submitted by the applicant to the commissioner is set forth in §12.103. The applicable timeframes and the duties of the applicant and the department during the application process are set forth in §12.104, and the requirements for filing revisions to the application during the review process are contained in §12.105. Provisions allowing the department to conduct on-site qualifying examinations as a requirement of certification are included in §12.106. Procedures for withdrawal of an application from consideration are contained in §12.107. Section 12.108 provides that an independent review organization must apply for renewal of its certificate of registration each year, and sets forth renewal requirements and procedures. Section 12.109 sets forth the appeal process if an application or renewal is denied.

Subchapter C contains the general standards for independent review. Section 12.201 describes the independent review plan, which must be filed by independent review organizations, and lists the components which must be included in such plan. Personnel and credentialing requirements for independent review organizations are set forth in §12.202. Section 12.203 states that certain conflicts render an independent review organization ineligible for certification. Prohibitions of certain activities of independent review organizations are described in §12.204, including direct or indirect compensation arrangements which may affect the review decision. The independent review organization's contact with and receipt of information from health care providers and patients is governed by §12.205. The requirements of notices of determinations made by independent review organizations are prescribed in §12.206. Section 12.207 contains requirements for an independent review organization's telephone accessibility. Confidentiality requirements with regard to independent review are set forth in §12.208.

Subchapter D contains the regulations for enforcement of standards of independent review. Section 12.301 describes how a complaint regarding an independent review organization may be filed with the department, and provides that the department may make necessary inquiries to investigate such complaints. Regulations governing the prosecution of administrative violations are set forth in §12.302.

Subchapter E contains information regarding fees and payment for independent review. Section 12.401 provides, in general, that the department shall establish, administer, and enforce certification and renewal fees for independent review organizations. Specialty classifications of independent review are divided into two tiers for purposes of setting fees in §12.402. Section 12.403 sets forth fee amounts for the two specialty classification tiers prescribed by §12.402. Section 12.404 sets forth information regarding the payment of fees established in this subchapter. Section 12.405 deals with failure of payors to pay invoices for independent review within a certain timeframe. Section 12.406 sets forth the amounts of application and renewal fees.

Subchapter F describes the random assignment of independent review organizations by the department. The manner in which requests for independent review are made to the department is set forth in §12.501. The procedure for random assignment of requests for independent review to independent review organizations by the department is described in §12.502.

General. Most commenters expressed general support for the new chapter and offered comments or concerns on specific sections of the new chapter. One commenter specifically supports the following: the definition for "medical and scientific evidence" and "active practice;" the provisions for notifying patients, patient representatives, and providers of record about independent review organization procedures; the prohibition on incentives for independent review organization reviewers that would affect review decisions; the requirement that costs of review are to be borne by the payor; and the provision concerning direct contact with the patient or his/her representative in emergency/life-threatening situations.

Agency Response: The agency appreciates the written comments received.

Minimum threshold for review. A commenter suggests that there be a minimum dollar amount before a person can proceed to an independent review. The commenter is concerned that the process will be abused and that denial of benefits will be appealed indiscriminately and that carriers will be forced to provide a benefit (even when it is not a covered benefit) because the cost of the appeal will exceed paying the benefit. The commenter suggests that the minimum amount be equal to the average cost of an independent review or that a sliding scale be utilized. The commenter also questions whether the Medicare appeals process supersedes these rules. The commenter suggests that provisions be included to avoid conflict or duplication with the Medicare appeals process.

Agency Response: The department acknowledges the commenter's concern but does not believe that it has the statutory authority to adopt a minimum threshold before the review process can be utilized. It is the department's belief that the independent review process is to be available to everyone regardless of the amount of the procedure or benefit denied. The department is coordinating with the appropriate state and federal Medicare offices to identify any possible conflicts with the Medicare appeals process. The department believes that both appeals processes can occur without conflict and with minimum, if any, duplication.

Evidentiary use of determination. A commenter recommends that the department restrict the use of the independent review organization determination in court proceedings and suggests that the records and determinations be considered those of a "medical committee" within the meaning of the Health and Safety Code. The commenter is concerned that the independent review organization staff will be continually subpoenaed to testify if this isn't done and it will adversely impact the cost of independent review organization appeals.

Agency Response: Section 12.208 of the rules reflects the statutory intent of confidentiality of individual medical records, personal information and any proprietary information provided

by payors. The department does not believe that it can provide that the records and determinations of an independent review organization are those of a "medical committee" as suggested by the commenter because the statutory definition of "medical committee" does not include independent review organizations. The department is concerned that this action would exceed the regulatory authority of the agency.

§12.4. A commenter recommends that new Chapter 12 not be applied to utilization review of workers' compensation medical benefits.

Agency Response: The agency agrees that these rules should not apply to utilization review of workers' compensation medical benefits. House Bill 3197, 75th Texas Legislature, amended Texas Insurance Code Article 21.58A to require the regulation of a person who performs review of a medical benefit provided under Chapter 408, Labor Code, which is the portion of the Texas Workers' Compensation Act that governs workers' compensation benefits. However, that bill also stated that this provision does not affect the authority of the Texas Workers' Compensation Commission (TWCC) to exercise the powers granted under the workers' compensation act, and that in the event of a conflict between the two statutes, the workers' compensation act prevails. The agency has determined, in conjunction with TWCC, that procedures and rules specific to independent review organizations are in conflict with provisions of the workers' compensation act, and that the latter should prevail. Procedures for an independent, objective review of denial of a medical benefit are already contained in the workers' compensation statutes and rules, which provide for medical dispute resolution by TWCC and for appeal to the State Office of Administrative Hearings.

§12.5 Adverse Determination, Independent Review and §12.103. A commenter recommends that the definition of "adverse determination" be clarified to include determinations made "on behalf of all payors," and states that the current definition fails to take into account those payors who conduct utilization review processes in-house. A commenter suggests deleting the words "or not appropriate" from the definition of "adverse determination." A commenter suggests deleting the words "and appropriateness" from the definition of independent review. Another commenter recommends deleting the words "and appropriateness" from §12.103(1)(A). The commenter believes that a health benefit may be deemed appropriate yet still not be a covered benefit under the plan, so the issue of appropriateness is not relevant for the purposes of independent review.

Agency Response: The department agrees that "adverse determination" should include determinations made on behalf of all payors, and the definition has been changed to clarify this issue. The department disagrees with the other suggestions. The definitions of adverse determination and independent review are consistent with the definitions that the department and the Utilization Review Advisory Committee have proposed in the utilization review rules. The department believes that the use of the term "appropriate" is consistent with the intent of the Legislature to ensure that the utilization review process not be used to ration health care by denying treatments which may be appropriate, simply because they are costly.

§12.5. Dental Plan and other terms. A commenter recommends including separate definitions for "dental benefit plan" and "dental insurance policy" which would parallel the definitions for "health benefit plan" and "health insurance policy" and would clarify the terms. Another commenter requests adding definitions for "management services organizations" and "administrative services organizations."

Agency Response: The department disagrees and believes that the current definition adequately reflects necessary distinctions between a dental benefit plan and a dental insurance policy, and between a health benefit plan and health insurance policy. The department disagrees that there is a need to add definitions for "management services organizations" and "administrative services organizations" because these are not specific terms used in this chapter.

§12.5. Life-threatening condition. A commenter suggests that this definition use the language provided in the NAIC Utilization Review Model Act for dealing with expedited utilization review appeals.

Agency Response: The department disagrees because the language contained in the rule is statutory language and the department does not believe that it would be appropriate to change the statutory meaning. When the matter involves an emergency situation, then the provisions of Senate Bills 384 and 385 relating to managed care and utilization review will cover the situation.

§12.5. A commenter suggests a more specific definition for the term "screening criteria."

Agency Response: The department agrees. This definition has been changed accordingly.

§12.103(5). A commenter requests addition of the words "after hours" after the word "contacted."

Agency Response: The department agrees. This language has been changed accordingly.

§12.103(9). A commenter believes that the extensive identifying information which would have to be provided for each individual in the independent review organization would be an administrative burden and not a good indicator of an organization's ability to qualify as an independent review organization. The commenter supports not requiring the information on each individual and instead recommends that the relationships for which information must be submitted pursuant to §12.103(9) be limited to those which represent at least 5% of that person's total revenue, or which represent an investment of $100,000 or more.

Agency Response: Section 12.103(9) has been changed to delete the word "staff" and include the word "executives" and has deleted the requirement to submit staff profiles as too onerous and administratively burdensome on the independent review organization. Section 12.103(9) has also been changed to limit this disclosure requirement to those relationships which represent at least 5% of that person's total revenues, or which represent a holding or investment worth $100,000 or more. The department believes that this change eases the administrative burden on independent review organization applicants without weakening the statutory prohibition on conflicts of interest.

§12.103(9). A commenter recommends addition of "management or administrative services organization or other similar entity" to the list of entities for which certain financial relationships must be disclosed.

Agency Response: The department disagrees and is unclear regarding the type of entity referenced by the commenter. The

list of entities in the rule is the same as that specified in the statute for which certain information must be disclosed.

§12.201. A commenter recommends addition of (2)(E), written procedures for assessing experimental status for purposes of claim payment, and (2)(F), requiring procedures and timeframes for handling emergency reviews.

Agency Response: The department believes that assessment of experimental status for purposes of claim payment is beyond the scope of the statute with regard to authority of independent review organizations. In addition, independent review procedures are not necessary regarding emergency situations, which are already governed procedurally by the provisions of Senate Bills 384 and 385 relating to managed care and utilization review.

§12.201(3). A commenter suggests that independent review determinations be reviewed by other health care providers, as appropriate for the review, to ensure that non-physician health care providers are reviewed by their peers rather than a physician or dentist. The commenter believes that a review of a determination by a non-physician health care provider is consistent with other provisions of the rules.

Agency Response: The department agrees and has added language to §12.201(3) and §12.201(4) to clarify that the appropriate provider shall review the case.

§12.202. A commenter suggests that a payor be given the right to review the screening criteria and review procedures to be used to determine medical necessity and appropriateness of health care by an independent review organization and that, should they differ significantly from the payor's own such criteria and procedures, the independent review organization be required to take that into account. The same commenter recommends that there be an appeal mechanism available to payors where a difference of such criteria and procedures is not taken into account. Another commenter suggests adding a new subsection (e) which would make copies of the independent review organization's credentialing policies and procedures available to payors and other interested parties upon request. The commenter believes this will keep all parties informed of the review requirements and qualifications of the persons making the independent review decisions.

Agency Response: The department disagrees. Medical necessity, although a subjective standard, is not subject to variation from company to company. Screening criteria will be reviewed by the department and its sufficiency determined accordingly. Section 12.206 provides that the independent review organization's notification of determination include a description and the source of the screening criteria that were utilized and a description of the qualifications of the reviewing physician or provider. This requirement in the rules will keep all parties informed of the review requirements and qualifications of the person making the independent review decision.

§12.202. A commenter recommends that language be added requiring that individual profiles be made available, on request, to the commissioner or his/her designee.

Agency Response: Assuming that the commenter is referring to §12.202(b), which requires an applicant to provide certain personnel information, such information is already available to the department pursuant to §12.302 and additional language is not necessary.

§12.203. A commenter recommends that a professional association of health care providers not be allowed to be an independent review organization.

Agency Response: The department disagrees. While the statute specifically prohibits an independent review organization from being a subsidiary of, or in any way controlled by, a payor or a trade or professional organization of payors, no such prohibition exists for professional associations of providers.

§12.205. A commenter notes that the rules do not specify whether the three business day requirement applies to when materials must be sent to, or actually received by, the independent review organization. The commenter believes that if actual receipt is required then additional costs may have to be incurred by the utilization review agent because they will only have two business days rather than three days to compile the information and may have to use a more expensive means of delivering the information.

Agency Response: The department notes that the requirement to provide the information to the independent review organization within the specified time is statutory and the information is required to be provided within the specified timeframe. The department considers that the word "provided" means actual receipt by the independent review organization and does not believe that it is sufficient to deposit the materials in the U.S. Mail on the third business day. Subsection (c) has been changed to clarify that the independent review organization is to actually receive the information within that time.

§12.205(e). A commenter believes that an independent review organization should not be reimbursed by a utilization review agent for copy costs. Another commenter is concerned that the rule will conflict with rules regarding the costs of copies of other agencies and lead to confusion with disputes and procedures.

Agency Response: The department does not agree. It is the duty of the party performing utilization review to seek out all pertinent information before making a determination of medical necessity. Requiring such reimbursement for the costs of copying such information will provide incentive for gathering all such information in the first level of review, or at least avoid any disincentives for gathering it and providing it to the independent review organization. The department recognizes that other agencies may have different rules regarding the amount to be paid for copy costs. The department also recognizes that a uniform rate cannot be adopted for all agencies. However, it does not believe that the rules will conflict with other agencies because the utilization review statute requires utilization review agents to reimburse providers for the costs of copies based on rules of the Texas Workers' Compensation Commission. These provisions are consistent with the utilization review statute and other rules of this agency regarding the costs of copies paid to providers.

§12.206(a). A commenter recommends that notice of determination be required to be given to a payor if the payor is conducting its own utilization review.

Agency Response: The department agrees and the language has been changed.

§12.206(b). A commenter recommends requiring a more expedited timeframe where the patient is currently in the hospital. Another commenter questions whether the times for notice in subsections (b) and (c) are business days or calendar days and suggests that the subsections should so specify.

Agency Response: The statute sets out specific timeframes for response and does not specify a more expedited timeframe for patients in the hospital. Therefore, the department declines to do so by rule. The times for notice are based on calendar days and not business days. It is generally recognized that if a statute does not specify business days, then calendar days will be used to determine the period of time. The department is using calendar days to determine all timeframes unless business days have been specifically stated.

§12.206(c). A commenter suggests addition of the words "or emergency" after "life-threatening condition." Another commenter recommends shortening the timeframe for response in life-threatening conditions.

Agency Response: The timeframe for response in the case of life-threatening conditions is dictated by statute. Imposition of a timeframe for response in emergency situations is not necessary, since emergency situations are governed by the provisions of Senate Bills 384 and 385 relating to managed care and utilization review.

§12.206(d). A commenter recommends adding as a requirement of notice a reference to pertinent health benefit plan language.

Agency Response: The department disagrees. Determinations made by independent review organizations are based on medical necessity, and pertinent health benefit plan language has no bearing on the standards of medical necessity. Section 12.204(a) prohibits an independent review organization from setting or imposing any notice or other review procedures contrary to the requirements of the health insurance policy or health benefit plans other than those set forth in the rules.

§12.206(d). A commenter noted that the screening criteria are not to be used as guidelines for making the decision.

Agency Response: The department agrees and has deleted the phrase regarding using guidelines in making determinations. The independent reviewer should refer to guidelines as an aid in the review process but will make a final decision based on his/her professional expertise and judgment.

§12.207(a). One commenter recommends increased requirements for phone access available to utilization review agents due to the fact that there are two time zones in Texas.

Agency Response: The department disagrees that increased telephone access is necessary. Texans that reside in the mountain time zone will have the same hours of access as those in the central time zone.

§12.207(b). A commenter believes that two days is not an appropriate timeframe for handling emergency or urgent situations.

Agency Response: The delivery of emergency care and payment for that care is covered under Senate Bill 385. Most likely the independent review organization process would be used retrospectively to determine whether the payor is obligated to pay for the emergency care rendered. Therefore, the timeframe set out in statute and rules should not adversely affect the delivery of emergency care.

§12.208(a). One commenter suggests setting minimum standards for information constituting "personal information" in the context of §12.208(a).

Agency Response: The department agrees and the language has been changed to include, at a minimum, a person's name, address, telephone number, social security number and financial information.

§12.208(a). This section requires that certain information be held confidential by an independent review organization "to the extent required by law." One commenter suggests that this language be deleted, since there may be no specific laws regarding the confidentiality of a payor's proprietary information. The same commenter recommends that independent review organizations treat determinations confidentially with respect to payors, and that independent review organizations be prohibited from publishing data which identifies a payor without prior written consent.

Agency Response: The department agrees and the language has been changed.

§12.208(f). A commenter suggests that the words "payors or utilization review agents" be added after the word "providers" in the last sentence of this paragraph, and reasons that, by indicating that summary information is not considered confidential, the information of a payor or utilization review agent that is proprietary will be considered confidential.

Agency Response: The department agrees and has added the recommended language.

§12.208(h). A commenter recommends that information generated and obtained by the independent review organization in the course of its reviews be retained for at least five years.

Agency Response: The department agrees that the retention time should be longer, and has increased it to a minimum of four years.

§12.208(h). A commenter requests clarification of language in §12.208(h) regarding retention of information relating to "a case which may be reopened." The same commenter requests clarification of whether this retention requirement pertains only in instances where the independent review organization has made an adverse determination.

Agency Response: The department agrees that this language is vague, and has deleted it. It is the department's intent that the retention requirements of this section pertain to all cases whether or not an adverse determination has been made in the matter before the independent review organization.

§12.301. A commenter requests that the department impose upon itself specific timeframes for response to complaints. Another commenter requests that a payor or utilization review agent be allowed to file a complaint with the department specifically regarding independent review organization staff.

Agency Response: The department disagrees. The rule requires a reasonable time period for response to complaints. Because the department may receive a wide variety of complaints, it is difficult to impose a specific timeframe for response. The department believes that filing a complaint regarding independent review organization staff is already addressed, since such complaints are allowed by §12.301(a).

§12.302(b)(1) and (3). One commenter recommends that the department have access only to organizational meeting minutes and records which relate to the operation of the independent review organization.

Agency Response: Section 12.302, as originally proposed, has been deleted from the rules because the department's authority under Insurance Code Article 1.24 to make inquiries of various licensed or certificated entities would also apply to independent review organizations. Pursuant to exercise of this authority, the department would be able to address all reasonable inquiries to an independent review organization.

§12.402. A commenter requests clarification of whether the independent review of cases pertaining to occupational therapy and physical therapy would be made by a physical therapist or by a doctor of medicine or doctor of osteopathy. This commenter states that such therapies must be ordered by doctors, and urges that they be reimbursed as tier one reviews.

Agency Response: The department agrees with the commenter that such therapies be reimbursed as tier one reviews since only a licensed physician may order such therapies to be performed. The department expects cases pertaining to occupational therapy and physical therapy to be reviewed by an occupational therapist or physical therapist, as appropriate, and by a physician.

For, with changes: Texas Medical Foundation, Mutual of Omaha Insurance Company, Blue Cross Blue Shield of Texas, The Disability Policy Consortium, New York Life Insurance Company, Texas HMO Association, American Insurance Association, Liberty Mutual Group, Texas Optometric Association, Inc., Kaiser Foundation Health Plan of Texas, Office of Public Insurance Counsel, Texas Association of Life and Health Insurers and Alliance of American Insurers.

Subchapter A. General Provisions

28 TAC §§12.1–12.5

The new sections are adopted under the Insurance Code, Articles 21.58C and 1.03A. The Insurance Code, Article 21.58C provides that the commissioner shall promulgate standards and rules for the certification, selection, and operation of independent review organizations to perform independent review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§12.1. Statutory Basis.

This chapter implements the provisions of Senate Bill 386 enacted by Acts 1997, 75th Legislature, Regular Session, codified as the Texas Insurance Code, Article 21.58C, effective September 1, 1997.

§12.3. Effect of Chapter.

The sections in this chapter are prescribed to govern the performance of appropriate statutory and regulatory functions and are not to be construed as limitations upon the exercise of statutory authority by the Commissioner of Insurance.

§12.4. Applicability.

All independent review organizations performing independent reviews of adverse determinations made in Texas as requested by utilization review agents, health insurance carriers, health maintenance organizations, and managed care entities, regardless of where the independent review activities are physically based, must comply with this chapter.

§12.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

Act – Insurance Code, Article 21.58C, entitled Standards for Independent Review Organizations.

Active practice—20 hours per week in the examination, diagnosis, and/or treatment of patients.

Administrator – A person holding a certificate of authority under the Insurance Code, Article 21.07-6.

Adverse determination – A determination made on behalf of any payor that the health care services furnished or proposed to be furnished to a patient are not medically necessary or not appropriate.

Affiliate – A person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

Commissioner – The Commissioner of Insurance.

Department – Texas Department of Insurance.

Dental plan – An insurance policy or health benefit plan, including a policy written by a company subject to the Insurance Code, Chapter 20, that provides coverage for expenses for dental services.

Dentist – A licensed doctor of dentistry holding either a D.D.S. or a D.M.D. degree.

Emergency care – Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

Health benefit plan – A plan of benefits that defines the coverage provisions for health care offered or provided by any organization, public or private, other than health insurance.

Health care provider – Any person, corporation, facility or institution, licensed by a state to provide or otherwise lawfully providing health care services, that is eligible for independent reimbursement for those services.

Health insurance policy – An insurance policy, including a policy subject to the Insurance Code, Chapter 20, that provides coverage for medical or surgical expenses incurred as a result of accident or sickness.

Independent review – A system for final administrative review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual who resides within the state by a designated independent review organization.

Independent review organization – An entity that is certified by the commissioner to conduct independent review under the authority of the Act. Such entity must have the capacity for independent review of all specialty classifications and subspecialties thereof contained in

the two tiered structure of specialty classifications set forth in §12.402 of this title (relating to Classifications of Specialty).

Independent review plan – The screening criteria and review procedures of an independent review organization.

Life-threatening condition – A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

Medical and scientific evidence – Evidence derived from the following sources:

(A) Peer reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(B) Peer reviewed literature, biomedical compendia and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpt–Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR).

(C) Medical journals recognized by the Secretary of Health and Human Services, under Section 1961(t)(2) of the Social Security Act.

(D) The following standard reference compendia: The American Hospital Formulary Service Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia- Drug Information.

(E) Findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(F) Peer reviewed abstracts accepted for presentation at major medical association meetings.

Nurse – A professional or registered nurse, licensed vocational nurse, or licensed practical nurse.

Open records law – Chapter 552, Government Code.

Patient – A person covered by a health insurance policy or health benefit plan on whose behalf independent review is sought. This term includes a person who is covered as an eligible dependent of another person.

Payor – An insurer writing health insurance policies; any health maintenance organization, self-insurance plan, or any other person or entity which provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to persons treated by a health care provider in this state pursuant to any policy, plan, or contract.

Person – An individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

Physician – A licensed doctor of medicine or a doctor of osteopathy.

Provider of record – The physician or other health care provider that has primary responsibility for the care, treatment, and services rendered or requested on behalf of the patient, or the physician or health care provider that has rendered or has been requested to provide the care, treatment, and/or services to the patient. This definition includes any health care facility where treatment is rendered on an inpatient or outpatient basis.

Screening criteria – The written policies, medical protocols, previous decisions and/or guidelines used by the independent review organization to make preliminary decisions about the medical necessity and appropriateness of a treatment, procedure, or service.

Utilization review agent – A person holding a certificate of registration under the Insurance Code, Article 21.58A.

Working day– A weekday, excluding New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Certification of Independent Review Organizations

28 TAC §§12.101–12.109

The new sections are adopted under the Insurance Code, Articles 21.58C and 1.03A. The Insurance Code, Article 21.58C provides that the commissioner shall promulgate standards and rules for the certification, selection, and operation of independent review organizations to perform independent review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§12.103. Information Required.

The applicant must provide information required by the commissioner, which includes, but is not limited to the following:

(1) a summary of the independent review plan which meets the requirements of §12.201 of this title (relating to Independent Review Plan) and must include:

(A) a summary description of screening criteria and review procedures to be used to determine medical necessity and appropriateness of health care;

(B) a certification signed by an authorized representative that such screening criteria and review procedures to be applied in review determinations are established with input from appropriate

health care providers and approved by physicians in accordance with §12.201(3) of this title (relating to Independent Review Plans); and

(C) procedures ensuring that the information regarding the reviewing physicians and providers is updated in accordance with §12.105(d) of this title (relating to Revisions During Review Process) and §12.108(e) of this title (relating to Renewal of Certificate of Registration) to ensure the independence of each health care provider or physician making review determinations.

(2) copies of policies and procedures which ensure that all applicable state and federal laws to protect the confidentiality of medical records and personal information are followed. These procedures must comply with §12.208 of this title (relating to Confidentiality);

(3) a certification signed by an authorized representative that the independent review organization will comply with the provisions of the Act;

(4) a description of personnel and credentialing, and a completed profile for each physician and provider, both as described in §12.202 of this title (relating to Personnel and Credentialing);

(5) a description of hours of operation and how the independent review organization may be contacted after hours, during weekends and holidays, as set forth in §12.207 of this title (relating to Independent Review Organization's Telephone Access);

(6) the organizational information, documents and all amendments, including:

(A) the bylaws, rules and regulations, or any similar document regulating the conduct of the internal affairs of the applicant with a notarized certification bearing the original signature of an officer or authorized representative of the applicant that they are true, accurate, and complete copies of the originals;

(B) for an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(C) a chart showing the internal organizational structure of the applicant's management and administrative staff; and

(D) a chart showing contractual arrangements of the independent review system.

(7) the name of any holder of bonds or notes of the applicant that exceed $100,000;

(8) the name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control and a chart or list clearly identifying the relationships between the applicant and any affiliates;

(9) biographical information about officers, directors, and executives ;

(A) the independent review organization must submit the name and biographical information for each director, officer, and executive of the applicant, any entity listed under paragraph (8) of this section, and a description of any relationship the named individual has which represents revenue equal to or greater than five percent of that person's total annual revenue or which represents a holding or investment worth $100,000 or more in any of the following entities:

(i) a health benefit plan;

(ii) a health maintenance organization;

(iii) an insurer;

(iv) a utilization review agent;

(v) a nonprofit health corporation;

(vi) a payor;

(vii) a health care provider; or

(viii) a group representing any of the entities described by clauses (i) through (viii) of this subparagraph.

(B) any relationship between the independent review organization and any affiliate or other organization in which an officer, director, or employee of the independent review organization holds a five percent or more interest;

(C) a list of any currently outstanding loans or contracts to provide services between the applicant and the affiliates;

(10) information related to out-of-state licensure and service of legal process. All applicants must furnish a copy of the certificate of registration or other licensing document from the domiciliary state's licensing authority. As a condition of being certified to conduct the business of independent review in this state, an independent review organization that maintains its principal offices or any portion of its books, records, or accounts outside this state must appoint and maintain a person in this state as attorney for service of process on whom all judicial and administrative process, notices, or demands may be served, and must notify the department of any change of appointment or appointee's address immediately;

(11) the percentage of the applicant's revenues that are anticipated to be derived from independent reviews conducted.

§12.106. Qualifying Examinations.

The commissioner or his or her designee may conduct an on-site qualifying examination of an applicant as a requirement of certification as an independent review organization. Documents must be available for inspection at the time of such qualifying examination at the administrative offices of the independent review organization.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. General Standards of Independent Review

28 TAC §§12.201–12.208

The new sections are adopted under the Insurance Code, Articles 21.58C and 1.03A. The Insurance Code, Article 21.58C provides that the commissioner shall promulgate standards and rules for the certification, selection, and operation of independent review organizations to perform independent review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the

duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§12.201. Independent Review Plan.

The independent review plan shall be conducted in accordance with standards developed with input from appropriate health care providers, and reviewed and approved by a physician. The independent review plan shall include the following components:

(1) a description of the elements of review which the independent review organization provides;

(2) written procedures for:

(A) notification of the independent review organization's determinations provided to the patient or a person acting on behalf of the patient, the patient's provider of record, and the utilization review agent as addressed in §12.206 of this title (relating to Notice of Determinations Made by Independent Review Organizations);

(B) review, including:

(i) any form used during the review process;

(ii) timeframes that shall be met during the review;

(C) accessing appropriate specialty review;

(D) contacting and receiving information from health care providers in accordance with §12.205 of this title (relating to Independent Review Organization's Contact With and Receipt of Information from Health Care Providers);

(3) screening criteria. Each independent review organization shall utilize written medically acceptable screening criteria which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers. Such screening criteria must be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from the norms when justified on a case-by-case basis. Screening criteria must only be used as a tool in the review process. Such written screening criteria and review procedures shall be available for review and inspection and copying as necessary by the commissioner or his or her designated representative in order for the commissioner to carry out his or her lawful duties under the Insurance Code.

(4) independent review determinations. Each independent review organization shall utilize review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers. Independent review determinations shall be made in accordance with medically accepted screening criteria, taking into account the special circumstances of each case that may require a deviation from the norm. All independent review determinations shall be made by physicians, dentists, or other health care providers, as appropriate.

§12.205. Independent Review Organization Contact With and Receipt of Information from Health Care Providers and Patients.

(a) A health care provider may designate one or more individuals as the initial contact or contacts for independent review organizations seeking routine information or data. In no event shall the designation of such an individual or individuals preclude an independent review organization or medical advisor from contacting a health care provider or others in his or her employ where a review might otherwise be unreasonably delayed or where the designated individual is unable to provide the necessary information or data requested by the independent review organization.

(b) An independent review organization may not engage in unnecessary or unreasonably repetitive contacts with the health care provider or patient and shall base the frequency of contacts or reviews on the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.

(c) In addition to pertinent files containing medical and personal information, the utilization review agent, health insurance carrier, health maintenance organization, or managed care entity requesting the independent review shall be responsible for timely delivering to and ensuring receipt by the independent review organization any written narrative supplied by the patient pursuant to Insurance Code, Article 21.58A. However, in instances of emergency or life-threatening condition, the independent review organization shall contact the patient or person acting on behalf of the patient, and provider directly.

(d) An independent review organization shall notify the department within 24 hours of receipt of information regarding an independent review from the requesting utilization review agent, health insurance carrier, health maintenance organization, or managed care entity that such documents have been delivered and the date of such delivery.

(e) An independent review organization shall reimburse health care providers for the reasonable costs of providing medical information in writing, including copying and transmitting any requested patient records or other documents. A health care provider's charge for providing medical information to an independent review organization shall not exceed the cost of copying set by rules of the Texas Workers' Compensation Commission for records and may not include any costs that are otherwise recouped as a part of the charge for health care. Such expense shall be reimbursed by the utilization review agent, health insurance carrier, health maintenance organization, or managed care entity requesting the review as an expense of independent review.

(f) When conducting independent review, the independent review organization shall collect any information necessary to review the adverse determination not already provided by the utilization review agent, health insurance carrier, health maintenance organization, or managed care entity. This information may include identifying information about the patient, the benefit plan, the treating health care provider, and/or facilities rendering care. It may also include clinical information regarding the diagnoses of the patient and the medical history of the patient relevant to the diagnoses; the patient's prognosis; and/or the treatment plan prescribed by the treating health care provider along with the provider's justification for the treatment plan.

(g) The independent review organization should share all clinical and demographic information on individual patients among its various divisions to avoid duplication of requests for information from patients or providers.

§12.206. Notice of Determinations Made by Independent Review Organizations.

(a) An independent review organization shall notify the patient or a person acting on behalf of the patient, the patient's provider of record, the utilization review agent, the payor, and the department of a determination made in an independent review.

(b) The notification required by this section must be mailed or otherwise transmitted not later than the earlier of:

(1) the 15th day after the date the independent review organization receives the information necessary to make a determination; or

(2) the 20th day after the date the independent review organization receives the request for the independent review; and

(c) in the case of a life-threatening condition, by telephone to be followed by facsimile, electronic mail, or other method of transmission not later than the earlier of:

(1) the 5th day after the date the independent review organization receives the information necessary to make a determination; or

(2) the 8th day after the date the independent review organization receives the request for independent review.

(d) Notification of determination by the independent review organization must include:

(1) the specific reasons, including the clinical basis, for the determination;

(2) a description and the source of the screening criteria that were utilized;

(3) a description of the qualifications of the reviewing physician or provider; and

(4) a certification by the independent review organization that the reviewing physician or provider has certified that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to the independent review organization.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Enforcement of Independent Review Standards

28 TAC §§12.301, 12.302

The new sections are adopted under the Insurance Code, Articles 21.58C and 1.03A. The Insurance Code, Article 21.58C provides that the commissioner shall promulgate standards and rules for the certification, selection, and operation of independent review organizations to perform independent review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§12.301. Complaints and Information.

(a) Complaints to the department. Within a reasonable time period, upon receipt of a written complaint alleging a violation of this chapter or the Act by an independent review organization from a patient's health care provider, a person acting on behalf of the patient, the patient, the payor, or a utilization review agent, the department shall investigate the complaint and furnish a written response to the complainant and the independent review organization named.

(b) Authority of the department to make inquiries. The department may use the authority of Insurance Code, Article 1.24, to make inquiries of any independent review organization.

§12.302. Administrative Violations.

(a) If the department believes that any person conducting independent review is in violation of the Act or this chapter, the department shall notify the independent review organization of the alleged violation and may compel the production of any and all documents or other information as necessary to determine whether or not such violation has taken place.

(b) The department may initiate appropriate proceedings under this chapter.

(c) Proceedings under this chapter are a contested case for the purpose of the Government Code, Chapter 2001.

(d) If the commissioner or his or her designee determines that the independent review organization has violated or is violating any provision of the Act or this chapter, the commissioner or his or her designee may:

(1) impose sanctions under the Insurance Code, Article 1.10;

(2) issue a cease and desist order under the Insurance Code, Article 1.10A; and/or

(3) assess administrative penalties under the Insurance Code, Article 1.10E.

(e) If the independent review organization has violated or is violating any provisions of the Insurance Code other than the Act, or applicable rules of the department, sanctions may be imposed under the Insurance Code, Articles 1.10, 1.10A, or 1.10E.

(f) The commission of fraudulent or deceptive acts or omissions in obtaining, attempting to obtain, or use of certification or designation as an independent review organization shall be a violation of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Fees and Payment

28 TAC §§12.401–12.406

The new sections are adopted under the Insurance Code, Articles 21.58C and 1.03A. The Insurance Code, Article 21.58C provides that the commissioner shall promulgate standards and rules for the certification, selection, and operation of independent review organizations to perform independent review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§12.404. Payment of Fees.

(a) Independent review organizations shall bill utilization review agents or payors, as appropriate, directly for fees for independent review.

(b) Independent review organizations may also bill utilization review agents or payors, as appropriate, for copy expenses related to review as set forth in §12.205 of this title (relating to Independent Review Organization Contact With and Receipt of Information from Heath Care Providers and Patients).

(c) At the time of billing, independent review organizations shall provide to the department a copy of such bill for information.

(d) Utilization review agents or payors, as appropriate, shall pay independent review organizations directly within 30 days of receipt of invoice.

(e) Utilization review agents may recover from the payors the costs associated with the independent review.

§12.405. Failure to Pay Invoice.

Failure by utilization review agents or payors, as appropriate, to pay invoices from an independent review organization within 30 days of receipt shall constitute a violation subject to penalty under §12.303 of this title (relating to Administrative Violations).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. Random Assignment of Independent Review Organizations

28 TAC §§12.501, 12.502

The new sections are adopted under the Insurance Code, Articles 21.58C and 1.03A. The Insurance Code, Article 21.58C provides that the commissioner shall promulgate standards and rules for the certification, selection, and operation of independent review organizations to perform independent review. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§12.501. Requests for Independent Review.

Requests for independent review shall be made to the department on behalf of the patient by the utilization review agent pursuant to Insurance Code, Article 21.58A §6A and Chapter 19, Subchapter R of this title (relating to Utilization Review Agents), or by a health insurance carrier, health maintenance organization, or managed care entity pursuant to Civil Practice and Remedies Code, §88.003(c).

§12.502. Random Assignment.

(a) The department shall randomly assign each request for independent review to an independent review organization, and shall notify the utilization review agent and the health insurance carrier, health maintenance organization or managed care entity requesting the independent review, the independent review organization, the patient or a person acting on behalf of the patient, and the provider of record of such assignment.

(b) The department shall screen treating physicians, other providers, and payors against the independent review organization. The independent review organization shall screen its physicians and other providers conducting independent review for potential conflicts of interest. The department shall have the discretion to determine whether conflicts exist.

(c) Independent review organizations shall be added to the list from which random assignments for independent review are made in order of the date of certification by the department.

(d) Random assignment shall be made chronologically from the list of independent review organizations with ultimate assignment to the first in line with no apparent conflicts of interest.

(e) An independent review organization assigned an independent review moves the independent review organization to the bottom of the list.

(f) Nonselection for presence of conflicts of interest does not move the independent review organization to the bottom of the list. Such independent review organization retains its chronological position until selected for independent review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 50. Action on Applications

Subchapter B. Action by the Commission

30 TAC §50.15

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to 30 TAC §50.15, concerning Scope of Proceedings. The section is adopted with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9433).

Chapter 50, Subchapter B was adopted May 8, 1996, and effective June 6, 1996, replacing 30 TAC §305.98. These amendments will attain consistency with federal permitting requirements, which is required before EPA may approve the assumption by Texas of the federal National Pollutant Discharge Elimination System (NPDES) program for permitting discharges into waters in the state.

EXPLANATION OF ADOPTED RULE

The amendment to §50.15 will attain consistency with NPDES, Resource Conservation and Recovery Act (RCRA) and Underground Injection Control (UIC) program requirements. Specifically, 40 Code of Federal Regulations (CFR) §122.46 provides that NPDES permits shall be effective for a fixed term not to exceed five years and upon expiration must be reissued in their entirety. RCRA and UIC permits, pursuant to 40 CFR §270.50 and §144.36 respectively, are treated similarly except the fixed term may not exceed ten years. At expiration of an NPDES, RCRA, or UIC permit, the holder seeking reissuance must submit an application that is subject to technical evaluation, as well as public participation in the decision to issue or deny the application. Before this amendment, §50.15 provided that the commission could elect to limit consideration in permit renewal, amendment, or modification proceedings to only those portions of a permit for which the application requests action. The amended rule deletes the term "renewal," the term in state permit procedure that describes the same process as "reissuance" does under federal rules, so that every permit renewal will in effect be a new permit and all portions of a permit will have a fixed duration not to exceed either five or ten years, consistent with federal requirements.

The rule change further specifies that the commission may continue to limit consideration in renewals of preconstruction permits consistent with §382.055 of the Texas Health & Safety Code, which limits the commission's authority to impose new requirements in such permits renewals. The rule was amended to state that terms, conditions and provisions of existing permits will remain in effect until the commission acts on the application.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to facilitate compliance with the federal requirement that, upon expiration of the permit, the holder must submit an application for a permit that is subject to technical review and public participation in the agency's decision to grant or deny the application. The rule will advance this specific purpose by removing the existing authority to limit the scope of consideration in renewals of permits in applicable program areas. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because this rulemaking, which sets forth requirements applicable to all permitted facilities, does not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Further, the following exception to the application of Chapter 2007 of the Texas Government Code, set forth at Texas Government Code Annotated §2007.003(b), applies to these rules: the rulemaking is an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking is consistent with the applicable CMP goals and policies.

HEARINGS AND COMMENTERS

A public hearing was held on the rule in Austin, Texas on October 7, 1997. The public comment period closed on October 20, 1997. No oral or written testimony was submitted at the hearing or before the close of the comment period.

In order to make all the provisions in the section consistent, the commission has made an additional minor modification to the rule. The rule stated that a permittee shall comply with an existing permit "until a new, amended or modified permit is issued." That clause has been deleted and replaced with "until the commission acts on the application" to clarify that the existing permit remains in full force and effect until the commission takes action on the application. In addition, a change has been made to the Takings Impact Assessment to include a explanation of an exemption of takings law that applies to this rule. This change does not affect the conclusion of the assessment that no takings has occurred; instead it more fully explains the reasons for the commission's actions.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law.

§50.15. Scope of Proceedings.

The commission may limit consideration in permit amendment or modification proceedings to only those portions of a permit for which the application requests action. The commission may limit consideration in the review of preconstruction permit renewals consistent with the requirements set forth in Texas Health and Safety Code, §382.055. All terms, conditions, and provisions of an existing permit remain in full force and effect during such proceedings, and the permittee shall comply with an existing permit until the commission acts on the application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 55. Request for Contested Case Hearings, Public Comment

Subchapter B. Hearings Requests, Public Comment

30 TAC §55.25

The commission adopts an amendment to §55.25, concerning Public Comment Processing. The purpose of this action is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for federally authorized underground injection control (UIC), Texas Pollutant Discharge Elimination System (TPDES), and Resource Conservation and Recovery Act (RCRA) permit programs. Section 55.25 is adopted with changes to the proposed text as published in the August 8, 1997, issue of the *Texas Register* (22 TexReg 7336).

EXPLANATION OF THE ADOPTED RULE. The commission adopts this rule as part of its efforts to encourage public participation in the commission's proceedings (see also the commission's adoption of rules changes in 30 TAC Chapters 80 and 305 in this edition of the *Texas Register*). This is consistent with state policy as stated in Texas Water Code, §5.112, which calls for the commission to develop policies to provide the public with opportunities to appear and speak on issues under its jurisdiction. The adoption is also intended to address public participation issues connected with federal permitting programs. Currently the state's RCRA permitting program is under review by the United States Environmental Protection Agency (EPA), and private petitioners have filed a petition with the EPA seeking revocation of the commission's authorization to administer the UIC program. Also, the commission has submitted to EPA an application for authorization to implement the National Pollutant Discharge Elimination System (NPDES) Program.

The commission believes that Texas Water Code, Chapter 26, which contains numerous sections that are intended to satisfy authorization requirements, evidences a legislative directive that the commission's application for NPDES authorization is consistent with state policy to seek authorization. The commission and its predecessor agencies have pursued NPDES authorization for several years. Public participation has been an issue in NPDES negotiations and has become an issue in the RCRA and UIC programs because it has proven difficult to harmonize the federal requirements with Texas state law and commission rules. However, in an effort to overcome these difficulties, the commission has worked with EPA and ultimately reached an agreement that the rule adopted here will satisfy authorization requirements. The commission and the EPA have exchanged letters on these issues, and the EPA letter shows its interpretation that the commission must meet the authorization requirements described as follows and that the adopted rule here meets those requirements. The discussion in the responses to public comment gives further explanation of the bases for the adopted rule.

The amendment adds a new subsection (b) to §55.25, which provides for consideration of and written response to public comments by the decision maker on permitting actions in the UIC and RCRA programs, and in the TPDES program upon authorization. The amendment provides procedures for the content and timing of commission responses. It also authorizes the executive director to call and conduct public meetings on his own initiative or in response to public comment, and provides requirements governing those meetings. The section was modified from the proposal to require an applicant to attend any public meeting held by the executive director. The proposal was also modified to provide that when there is a contested case hearing, if the executive director specifies a different time and place for the public meeting, then public comment will not be taken at the preliminary hearing. These changes were made in response to public comments.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs. The rule will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. A "taking" is defined under the Private Real Property Rights Preservation Act as a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action. This rule does not require or provide for any restriction of an owner's use of real property; it concerns only procedures for public comment and agency response to comment. Also, this rule is under two exceptions to the Private Real Property Rights Preservation Act: first, the action fulfills an obligation mandated by federal law, and second, the rule advances the health and safety purpose, and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rule is not subject to the CMP.

HEARING AND COMMENTERS. A public hearing on the proposed rule was held in Austin on September 8, 1997. The comment period closed September 8, 1997. Written comments were received from Brown McCarroll and Oaks Hartline (Brown McCarroll), Eastman Chemical Company (Texas Eastman), Exxon Company USA (Exxon), Texas Association of Business and Chambers of Commerce (TABCC), Texas Chemical Council (TCC), Texas Instruments (TI), Texas Mid-Continent Oil and Gas Association (TMOGA), Thompson and Knight, the commission's Office of Public Interest Counsel (OPIC), and an individual. In addition to its own comments, TMOGA endorsed those of TABCC and TCC. The following jointly submitted comments:

Blackburn and Carter; Clean Water Action; Consumers Union; East Texas Communities Network; Environmental Defense Fund; Henry, Lowerre, Johnson, Hess & Frederick; League of Women Voters of Texas; Public Citizen; Sierra Club; Save Our Springs Alliance; Texas Center for Policy Studies; and the American Lung Association of Texas (Henry, Lowerre). An individual submitted oral comment at the public hearing.

The following description of public comment and the commission's responses frequently refer to "certain applications" or "certain enforcement actions." This is a reference to applications or enforcement proceedings concerning UIC, TPDES, or RCRA facilities. References to "federally authorized programs" apply to the federal permitting program for each of these types of facilities, when and for so long as the commission is authorized to administer them by EPA.

Henry, Lowerre commented that the proposed rules do not contain public participation provisions that are required by Senate Bill (SB) 1591, 75th Texas Legislature, concerning regulatory flexibility.

The commission has made no changes in response to this comment. SB 1591 procedures are not the subject of these rules, which is adopted to bring the commission's procedures for receiving, considering, and responding to public comment, and for allowing limited intervention in enforcement proceedings, into compliance with federal procedural requirements for the three authorized programs. SB 1591 provides for the adoption of rules specifying the procedure by which an applicant may be exempt from a requirement of a statute or commission rule if the applicant proposes to control or abate pollution by an alternative method, and includes a requirement for public notice and public participation in a proceeding involving an application for an exemption. The rules adopted today do not address that exemption procedure.

Henry, Lowerre requested that the commission reconsider its proposal to adopt rules on notice and comment procedures in addition to the existing rules on contested case hearings. Rather, the commenter asked that the commission adopt rules on standing for contested case hearings that are similar to federal law on standing to appeal the decisions of the EPA. TMOGA and TABCC suggested the rules should be revised to make a notice and comment process replace the current contested case hearing process.

This rulemaking is intended to bring the authorized programs into compliance with federal requirements for public participation in the permitting process, and to harmonize those requirements with the contested case hearing process. The addition of subsection (b) to §55.25 provides for consideration of and written response to public comments by the decision maker on permitting actions. The federal rules require that comments be considered in making the final decision and answered in a similar manner provided by the adopted rules (see Title 40 Code of Federal Regulations (CFR) §124.11 and §124.17). The public participation procedures established by this rule will satisfy the requirement for the federally authorized programs. Contested case hearings will continue to be an additional avenue for public participation, as provided for in state law. The types of changes suggested by the commenters are more properly within the purview of the Legislature, which has, in fact, considered them in the past.

Texas Eastman requested that the commission clarify the extent to which it intends to rely on significant comments submitted during the public comment period when evaluating a request for a contested case hearing. Specifically, Texas Eastman requested clarification on whether the commission intends to be able to rely on comments and submissions from the public comment period in determining whether a person requesting a contested case hearing is an affected person, whether a request for contested case hearing is reasonable, and whether the commission should limit the scope of the issues referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

The commission responds that hearing requests will continue to be considered under the rules set out in 30 TAC §§55.23 and 55.27-55.31. The commission will not consider public comment when the commission evaluates whether a hearing request meets the requirements of §55.27(b). However, the commission will consider public comment when evaluating whether under §55.27(c) the commission should refer an application to SOAH for hearing because it is in the public interest. The commission notes that under 30 TAC §80.5, the commission sets the scope of a hearing referred to SOAH. The commission will consider public comment when determining the scope of a hearing referred to SOAH.

TCC and Brown McCarroll requested that the commission revise the takings impact assessment that was prepared under Texas Government Code, §2007.043. The commenters did not believe the proposed rule is required by federal law, as is stated in the commission's takings impact assessment. Brown McCarroll also commented that the proposed changes to Chapter 80 (concerning other rules changes published in this edition of the *Texas Register*) on permissive intervention in administrative enforcement cases are not required by federal law. They argue that a state seeking authorization may satisfy the requirements of 40 CFR §123.27(d) and §145.13(d) by allowing permissive intervention in state court enforcement actions, that this is the case in Texas, and so there is no need to also allow for permissive intervention in administrative actions.

The commission believes that the rule falls under an exception to the Private Real Property Rights Preservation Act (the Act) because federal law mandates its adoption to accommodate requirements in the authorized programs. EPA interprets the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and Title 40 CFR §123.25(a) for NPDES, §145.11(a) for UIC, and §271.14(a) for RCRA to require authorized programs to provide for notice, opportunity for comment, consideration of comment, and appeal by the commenter as set out in 40 CFR §§124.10, 124.11, 124.17, and 123.30. The commission and the EPA have exchanged letters on these issues, and the EPA letter evidences both EPA's conviction that the commission must meet the authorization requirements described here and its agreement that the adopted rules meet those requirements. Concerning intervention in administrative enforcement actions, the commission responds to the commenters in its adoption of changes to 30 TAC Chapter 80 published in this edition of the *Texas Register* .

Texas Eastman suggested that the proposed rules on processing public comment should apply to all applications before the commission, not just to certain applications. Texas Eastman acknowledged that its proposal was outside the scope of this rulemaking project. TCC, TI, TMOGA, and TABCC commented that the addition of the public meeting to the hearing process will prolong the entire permitting process. Henry, Lowerre commented that the proposed rules do not contain a provision on

public petitions for amendments to permits, which is required by federal law for a state that manages certain federal permitting programs.

The commission agrees with Texas Eastman that its suggestion to apply this new process to all permitting actions is beyond the scope of this project. The commission also recognizes that there may be infrequent instances in which the application process may be made longer because of a public meeting. However, the commission has fashioned the rules to minimize both the number of those instances and the additional time required in those instance which do occur. The procedures are designed to run concurrently, not sequentially, and the staff will endeavor to prevent any unnecessary lengthening of the process. Procedures for requesting amendments to existing permits are outside the scope of this project. The procedures for affected persons to request an amendment of a permit are in 30 TAC §305.62.

Henry, Lowerre commented that the commission issues temporary and emergency orders for activities that would otherwise violate law, and therefore the commission is not in compliance with federal requirements for states that manage certain federal permitting programs.

This comment is beyond the scope of this rulemaking. Chapter 55 specifically does not apply to emergency or temporary orders. For the commenter's information, however, the commission on November 5, 1997, adopted rules that amend Chapter 305, Subchapter B, Emergency Orders and Temporary Orders and Executive Director Authorizations.

Henry, Lowerre commented that 30 TAC §50.41 concerning the eligibility of the executive director does not comply with federal conflict of interest limits on all staff directors who would issue NPDES permits.

This comment is beyond the scope of this rulemaking. However, the commission notes that §50.41 conforms to 40 CFR §123.25(c) with regard to the executive director, and points out that currently only the commission and the executive director are authorized to approve wastewater discharge permits. In the event other individuals are delegated such authority over NPDES permits, that delegation will conform to federal requirements, as well.

Thompson and Knight commented that the title of Chapter 55 should be changed to "Public Comments and Requests for Contested Case Hearings," and that the title of Chapter 55, Subchapter B, should also be changed to reflect that the subchapter covers the processing of public comment.

The commission has made no changes in response to this comment. The title to Chapter 55 is "Request for Contested Case Hearings; Public Comment" and the title of Chapter 55, Subchapter B, is "Hearing Requests, Public Comment." The commenter may be referring to a typographical error in the title of Chapter 55 in the commission's publication RG-145 (the commission's procedural rules). The commission will address that error upon publishing the next edition of the publication.

Henry, Lowerre commented that the proposed rules do not provide adequate opportunities for comments by "interested persons" because §55.21(d) limits the time to file comments to the minimum required by EPA's rules and do not provide for any extension of the time limits for any good cause. The commenter also objected to the fact that there are no provisions in the commission's existing or proposed rules for advising the public or federal agencies of significant changes in the permit that may have resulted from public comment.

The commission has not proposed changes to §55.21, and disagrees that the proposed rules do not provide adequate opportunities for comments by an interested person. Thirty days is the time provided in the federal regulations. The rule as adopted provides for a minimum of 30 days, with an extension of the comment period to the end of the public meeting, if one is called. The commission notes that the commenters' concerns relating to notice are outside the scope of this rulemaking. The commission's rules on public notice (including notice to federal agencies) are in 30 TAC Chapter 39, and they comply with state and federal requirements.

OPIC commented that §55.25(b)(1)(A) and (B) should be clarified as to how the agency's response to public comment will be made available to the public. OPIC further requested a requirement that the executive director serve its response to public comment on OPIC and any other party when the application has been referred for contested case hearing. Henry, Lowerre noted that §55.25(b)(1)(B) should conform with §50.33(b), which requires that response to public comment be mailed to those persons who timely filed public comments with a notice that they may file a motion for reconsideration under §50.39.

The commission has made no changes in response to the comments by OPIC. While the commission may issue instructions to the agency on how to make public comment available to the public, the commission concludes that such instructions should not be part of the rules because the rules are intended to specify procedural rights. The commission encourages OPIC to work with the executive director and the chief clerk to make sure that OPIC is provided with the information OPIC desires. The commission notes that if an application is referred for a contested case hearing, then the usual filing and service of document requirements would apply under 30 TAC Chapter 1, and so the executive director would be required to serve a copy of his responses to public comment on the parties, including OPIC.

Additionally, the commission has made no changes in response to the suggestion by Henry, Lowerre because the existing rule at §50.33(b) clearly states that the processing requirements apply to all approvals by the executive director. Thus, there is no need to state this procedural requirement again in §55.25(b)(1)(B).

An individual commented that §55.25(b) should be clarified concerning instances when the commission makes a decision on certain applications after taking public comment but without holding a contested case hearing. According to the commenter, the rule should specify that such public comment shall not form the factual or legal basis of the commission decision. The commenter's intent is to make sure the rule is consistent with the fact that only those persons with a personal interest in the application have rights to participate in agency or court proceedings on the application.

The commission understands this as a question concerning how public comment will be considered under Texas law. If the commission makes a final permit decision within the contested case hearing process, it will consider all the information that it is required or permitted to consider under Chapter 80, as amended by these rules, and the APA. For additional explanation, the commission refers the reader to the commission's adoption of changes to Chapter 80 that are published in this edition of the *Texas Register* . The commission's responses to public com-

ment explain how the commission will use public comment in a contested case hearing. When the commission makes the permit decision outside of the contested case hearing process, it will consider all public comments, the executive director's response to public comments, as well as any information submitted by OPIC or the applicant, as set out in §55.25(b). In addition, the commission will either adopt the executive director's, or issue its own, response to each of the public comments. The commission disagrees with any suggestion that public comment will be ignored.

Texas Eastman, OPIC, and an individual commented that §55.25(b)(1) should clarify what is the "significant" public comment to which the executive director must respond. Texas Eastman suggested that public comment that addresses matters outside the requirements for issuance of the permit is not "significant." Texas Eastman also requested clarification on whether or not this paragraph requires response to oral comments and suggested that the executive director respond only to written comments or to oral comments provided and transcribed at a public meeting called under §55.25(b)(2). One individual also commented on what the commission means by the word "consider" in §55.25(b)(1) and that there is no apparent connection between the consideration undertaken by the commission and the decision rendered and any appeal process.

The commission declines to attempt to set a strict definition of what is "significant," based on the difficulty of predicting either the issues or the comments that may arise. The commission notes that the federal regulations also do not define "significant." The rule envisions that the commission will respond to all relevant comments received within the comment period. This includes timely written comments and oral comments received in public meetings called either by the commissioners or by the executive director, where the oral comments will be transcribed. The commission describes how it will "consider" public comment in its responses to comments on §80.127(f) and §80.251, which follow in this issue of the *Texas Register* .

TABCC and TCC requested that §55.25(b)(2) be revised to clarify that there will not be a separate notice and comment hearing if a contested case hearing has been granted on an application.

When a contested case hearing is held on the application, the public meeting may be held as part of the preliminary hearing conducted under §80.105. The rule also provides that the public meeting (the "notice and comment hearing") may be held at a different time and place if the executive director so specifies. The commission believes that in some cases it may be beneficial to have the meeting at a separate time and declines to foreclose that option. However, the commission has modified the proposal to provide that if the executive director specifies a different time and place, then public comment will not be taken at the preliminary hearing. This change clarifies that in the event of a contested case hearing, there will only be one public meeting. The intent is certainly to have the processes run concurrently, and not sequentially, whenever possible and to prevent any duplication of effort when it can be avoided.

TCC requested that §55.25(b)(2) be revised to clarify that a public meeting held under the subsection is intended for taking public comment but is not intended to meet other public meeting requirements in state or federal law.

The commission does not adopt the proposed change because the commission intends that there may well be instances when one public meeting is held to satisfy the requirements of both §55.25(b)(2) and other requirements for holding a public meeting. For example, the executive director could convene one public meeting concerning a proposed Class 3 modification of an industrial or hazardous waste permit. This may satisfy both §55.25(b)(2) and the requirement to hold a public meeting on an application for a Class 3 modification (see 30 TAC §39.109(b)).

Both TCC and Brown McCarroll objected to proposed §55.25(b)(3). They requested that at least the paragraph be revised to further limit who may file a motion for rehearing. The proposed rule allows a person to file a motion for rehearing whether they have participated in the case up to the point of the final permit or not. The commenters requested that this be limited to require that the person wishing to participate later be "affected," and only be allowed to participate to the extent that any changes from the draft permit cause the final permit to be less stringent. Texas Eastman proposed that the paragraph be limited so that a person who has not participated in the case up to that point may protest the approved permit only if: the approved permit is different than the draft permit; and the person has shown good cause for failure to provide timely comment. Thompson & Knight commented on §55.25(b)(3) and suggested this paragraph be reworded to clarify its meaning.

The commission has made no changes in response to these comments. This paragraph concerns the final permit decision and is intended to define the limits of what may be the subject of a motion for rehearing (or a motion for reconsideration concerning a permit issued by the executive director), and thus satisfy the prerequisite for appealing a permitting decision to court. The commission intends to limit the subject matter of such motions both: to comments on draft permits made timely under the rules; and to permit provisions that first appear after the deadline for comments on the draft permit or upon issuance of the final permit. This will give both the applicant and the commission fair notice of the issues the person raises.

The commenters expressed concern that an applicant and the commission could be unfairly surprised by an issue raised only after the final permit subject to a motion for rehearing has been issued. The commission responds that commission rules require a motion for rehearing so the commission (and the applicant) will have the opportunity to address all issues before any court appeal. The adopted rule will also prevent the public from being unfairly surprised in those situations where after it is notified of a proposed permit action, that permit action is later revised without opportunity for the public to comment on the revision.

The commission declines to add a requirement that a person filing a motion for rehearing must be "affected" because this contradicts public comment procedure where any person may submit public comment. Concerning the commenters' suggestion that a late commenter's motion for rehearing be limited to revisions to the draft permit that cause the final permit to be less stringent, the commission acknowledges that the commenters raise a valid point. It could be unfair if a person first participated in the permit proceeding only after the issuance of the final permit decision subject to a motion for rehearing, and the person objected only to final permit provisions that are more stringent than the draft permit. But the commission considers it unlikely that the public will protest final permit provisions that are more stringent, and so the commission does not make any changes to the rule concerning this issue. As previously stated, the commission and the EPA have exchanged letters on these issues,

and the EPA letter evidences its interpretation that the commission must meet the authorization requirements described here and that the adopted rule meets those requirements. The commission declines to make any changes for this reason too. The commission declines to add a "good cause" requirement for similar reasons. Finally, the commission does not adopt the last commenter's suggestions because it believes that the rule is sufficiently clear.

Exxon commented that while subsection (c) on processing public comment in non-delegated programs requires that an applicant attend any public meeting, subsection (b) on delegated programs does not include this requirement. Exxon commented that these provisions should be made consistent.

The commission agrees with the commenter that §55.25(b)(2) should include a requirement that the applicant attend a public meeting held in response to public comment and has changed the rule to reflect the requirement.

Thompson & Knight commented on §55.25(c)(2), suggesting that the last sentence clarify that the designated office's duty to make its response available to the public applies to "any written" response.

The commission has made no change in response to this comment because it believes the rule is sufficiently clear.

Henry, Lowerre commented that the proposed rules and Texas statutes do not provide the necessary safeguards for judicial review for a person affected by a commission decision and who filed public comment at the agency level.

The commission understands that the commenter intends the "necessary safeguards" to be a reference to authorization requirements. The commission disagrees with the commenter because Texas statutes and the commission's rules do provide for judicial review of permitting decisions. A person who files public comment and follows commission procedure may seek judicial review of a commission decision. Texas Water Code, §5.351 provides that a person affected by a ruling, order, decision, or other act of the commission may file a petition to review, set aside, modify, or suspend the act of the commission. Section 55.25(b) and the sections cited in §55.25(b)(3) establish the procedural prerequisites a commenter must follow to preserve and exercise the right to seek judicial review under Water Code, §5.351. In addition to providing for the receipt, consideration of and response to public comment, Title 40 of CFR §123.30 requires authorized states to provide an opportunity for commenters to invoke judicial review of the final approval or denial of permits.

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§55.25. Public Comment Processing.

(a) (No change.)

(b) This subsection applies to applications concerning hazardous waste facilities, underground injection wells, or Texas Pollutant Discharge Elimination System (TPDES) permits. It applies to an application only when the commission has federal authorization to manage the permitting program under which the application is evaluated.

(1) Before an application is approved, the executive director shall prepare a response to all significant public comment on the draft permit raised during the public comment period. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The executive director shall make the response available to the public.

(A) If the application is acted on by the commission under §50.13 of this title (relating to Action on Application) or §55.27(a)(1) of this title (relating to Commission Action on Hearing Request), the executive director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the application. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title (relating to Action by the Executive Director), the response to public comment should be made no later than the time of the executive director's action on the application.

(2) The executive director may call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law. If a contested case hearing is held on the application, the public meeting shall be conducted as part of the preliminary hearing under §80.105 of this title (relating to Preliminary Hearings), unless the executive director specifies a different time and place for the public meeting. If the executive director specifies a different time and place for the public meeting, then public comment shall not be taken at the preliminary hearing. This paragraph supersedes and controls any conflict between this paragraph and §80.105 of this title (relating to Preliminary Hearings). The public comment period shall automatically be extended to the close of any public meeting. Public notice of the meeting shall be given as required by commission rule. The applicant shall attend any public meeting held by the executive director. A tape recording or written transcript of the public meeting shall be made available to the public.

(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.27 of this title (relating to Commission Action on Hearing Request) or §80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.

(c) This subsection applies to applications other than those under subsection (b) of this section. The commission may designate an agency office to process public comment under this subsection.

(1) The designated office may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title, any response to public comment should be made no later than the time of the executive director's action on the application.

(2) The designated office shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The applicant shall attend any such public meeting held by the designated office. When the designated office holds a public meeting it shall respond to public comment either by giving an immediate oral response or by preparing a written response. The response shall be made available to the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

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For further information, please call: (512) 239–1966

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Chapter 80. Contested Case Hearings

The commission adopts amendments to §§80.105, 80.109, 80.115, 80.127, 80.251, 80.271, and 80.273, as well as new §80.254 and §80.274, concerning public participation and motions for rehearing. The purpose of this action is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for federally authorized underground injection control (UIC), Texas Pollutant Discharge Elimination System (TPDES), and Resource Conservation and Recovery Act (RCRA) permit programs and to respond to recent legislative action. Section 80.127 is adopted with changes as published in the August 8, 1997, issue of the *Texas Register* (22 TexReg 7336). Sections 80.105, 80.109, 80.115, 80.251, 80.254, 80.271, 80.273, and 80.274 are adopted without changes and will not be republished.

EXPLANATION OF THE ADOPTED RULES. The commission adopts these rules to encourage public participation in the commission's proceedings. (see also the commission's adoption of rule changes in 30 TAC Chapters 55 and 305 in this edition of the *Texas Register*). This is consistent with state policy as shown in Texas Water Code, §5.112, which calls for the commission to develop public testimony policy. The rules are also intended to address public participation issues connected with federal permitting programs. Currently, the commission's authorization to administer the federal programs for the UIC and RCRA permitting programs is under review by the United States Environmental Protection Agency (EPA). Private petitioners have filed a petition with the EPA seeking to decertify the commission's UIC program. Also, the commission has submitted to EPA an application for authorization to implement the National Pollutant Discharge Elimination System (NPDES) Program. The commission believes that Texas Water Code, Chapter 26, which contains numerous sections that are intended to satisfy authorization requirements, shows that the commission's application for NPDES authorization is consistent with state policy to obtain authorization. The commission and its predecessor agencies have pursued NPDES authorization for several years. Public participation has been an issue in NPDES negotiations and has become an issue in the RCRA and UIC programs because it has proven difficult to harmonize the federal requirements with Texas state law and commission rules. However, in an effort to overcome these difficulties, the commission has worked with EPA and ultimately reached an agreement that the rules adopted here will satisfy authorization requirements. The commission and the EPA have exchanged letters on these issues, and the EPA letter shows its interpretation that the commission must meet the authorization requirements described as follows and that the adopted rules here meet those requirements. The discussion in the responses to public comment gives further explanation of the bases for the adopted rules.

The amendment to §80.105, concerning Preliminary Hearings, provides that a preliminary hearing is required for an enforcement matter under federally authorized UIC or TPDES permit programs. This will provide an opportunity for persons seeking to intervene to seek party status with limited rights to participate as a party in an enforcement proceeding in these federally authorized programs.

The amendment to §80.109, concerning Designation of Parties, provides that the parties to a contested enforcement case may include any other party granted permissive intervention by the State Office of Administrative Hearings (SOAH) administrative law judge in an enforcement proceeding concerning a UIC or TPDES permit under specified conditions.

The amendment to §80.115, concerning Rights of Parties, provides that only the executive director may seek to amend or add to the violations alleged in the initiating petition in an enforcement proceeding.

The amendment to §80.127, concerning Evidence, requires all public comment received during the public comment period on a proposed RCRA, UIC, or TPDES permit or amendment to be admitted into the evidentiary record. It also requires the executive director's responses to public comments to be admitted into the evidentiary record. The section also requires parties to be allowed to respond and to present evidence on each issue raised in public comment or the executive director's responses. The section was modified from the proposal to clarify that the subsection supersedes and controls any conflict between it and 30 TAC §80.111 (relating to Persons not Parties) concerning the admission of public comment into the evidentiary record.

The amendment to §80.251, concerning Judge's Proposal for Decision, provides that if a proposal for decision in a permitting case for a federally authorized RCRA, TPDES, or UIC program is adverse to a party, the decision must include proposed changes to the draft permit recommended by the judge in response to public comment.

New §80.254, concerning Settlement of Enforcement Cases, provides for an agreed settlement between the executive director and the respondent of an enforcement case. The section

requires the executive director and the respondent to submit the settlement to the judge, and it requires the judge to submit the proposed agreement to the commission for consideration. The new section also requires the judge to provide time to a dissenting party to file comments, and provides for the commission's consideration of those comments. The section allows the commission, after notice and opportunity for comment, either to approve or to disapprove the agreement, or to remand it to SOAH for a hearing. This will provide for notice and comment on proposed settlements and for settlements by fewer than all the parties to an enforcement proceeding, with commission approval.

The amendments to §80.271, concerning Motion for Rehearing, and §80.273, concerning Decision Final and Appealable, make conforming changes to provide for new §80.274.

New §80.274, concerning Motion for Rehearing Not Required in Certain Cases, provides that if all parties to a contested case agree, the date for filing a motion for rehearing can be shortened, not to exceed 20 days beyond the order date. This change is in response to Senate Bill 637, 75th Legislature, 1997.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs. The rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rule because it concerns commission procedural rules. A "taking" is defined under the Private Real Property Rights Preservation Act as a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action. These rules do not require or provide for any restriction of an owner's use of real property; they concern only procedures for public comment and agency response to comment. Also, the rules are under two exceptions to the Private Real Property Rights Preservation Act: first, the rules fulfill an obligation mandated by federal law, and second, the rules advance health and safety, and impose no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rules are not subject to the CMP.

HEARING AND COMMENTERS. A public hearing on the proposed rules was held in Austin on September 8, 1997. The comment period closed September 8, 1997. Written comments were received from Brown McCarroll and Oaks Hartline (Brown McCarroll), Eastman Chemical Company (Texas Eastman), Exxon Company USA (Exxon), Texas Chemical Council (TCC), and the commission's Office of Public Interest Counsel (OPIC). The following jointly submitted comments: Blackburn and Carter; Clean Water Action; Consumers Union; East Texas Communities Network; Environmental Defense Fund; Henry, Lowerre, Johnson, Hess & Frederick; League of Women Voters of Texas; Public Citizen; Sierra Club; Save Our Springs Alliance; Texas Center for Policy Studies; and the American Lung Association of Texas (Henry, Lowerre). An individual submitted oral comment at the public hearing.

The following description of public comment and the commission's responses frequently refer to "certain applications" or "certain enforcement actions." This is a reference to applications or enforcement proceedings concerning UIC, TPDES, or RCRA facilities. References to "federally authorized programs" apply to the federal permitting program for each of these types of facilities, when and for so long as the commission is authorized to administer them by EPA.

TCC and Brown McCarroll requested that the commission revise the takings impact assessment that was prepared under Texas Government Code, §2007.043. The commenters did not believe the proposed rules are required by federal law, as is stated in the commission's takings impact assessment. Brown McCarroll also commented that the proposed changes on permissive intervention in administrative enforcement cases are not required by federal law. They argue that a state seeking authorization may satisfy the requirements of 40 CFR §123.27(d) and §145.13(d) by allowing permissive intervention in state court enforcement actions, that this is the case in Texas, and so there is no need to also allow for permissive intervention in administrative actions.

The commission believes that these rules fall under an exception to the Private Real Property Rights Preservation Act (the Act) because federal law mandates their adoption to accommodate requirements in the authorized programs. EPA interprets the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and Title 40 CFR §123.25(a) for NPDES, §145.11(a) for UIC, and §271.14(a) for RCRA to require authorized programs to provide for notice, opportunity for comment, consideration of comment, and appeal by the commenter as set out in 40 CFR §§124.10, 124.11, 124.17, and 123.30. Concerning intervention in administrative enforcement actions, the commission responds that Texas has chosen to satisfy authorization requirements for the NPDES and UIC programs by implementing §123.27(d)(2) and §145.13(d)(2) of the regulations; that is, by electing the option of permissive intervention rather than the alternative of intervention as a right. EPA and federal courts have interpreted the Clean Water Act and these provisions of the CFR to mean that for a state to choose this option, its law or rules must actually offer a procedure for permissive intervention in both civil and administrative enforcement proceedings (see *Natural Resources Defense Council v. EPA* , 859 F.2d 156 (D.C. Cir. 1988)). Texas Water Code, §7.111, which supersedes the repealed §26.134, addresses intervention in civil enforcement in state court. These rules create the necessary avenue for permissive intervention in administrative enforcement hearings. The commission and the EPA have exchanged letters on these issues, and the EPA letter evidences both EPA's conviction that the commission must meet the authorization requirements described here and its agreement that the adopted rules meet those requirements.

Texas Eastman noted that §80.105(a), requiring the administrative law judge to hold a preliminary hearing in enforcement cases concerning underground injection control or TPDES per-

mits, does not apply to enforcement cases concerning RCRA permits. Texas Eastman requested that the commission's preamble on adoption of the rules acknowledge this exemption for RCRA permits. The commenter also suggested that the requirement in §80.105(a) not apply if no person submits a request to intervene as a party within 20 days prior to the proposed hearing date.

The commission believes the rule is specific in identifying that to which it applies. This requirement does not apply to RCRA permits because there is no similar federal requirement. The commission declines to require that requests to intervene be filed at least 20 days prior to the proposed hearing date, to avoid the necessity for additional notices and of hearings on whether or why a request may or may not have been timely filed. Intervention is a matter that can be addressed at the preliminary hearing.

TCC and Brown McCarroll requested that the commission not adopt §80.109(b)(6)(C), concerning permissive intervention in certain administrative enforcement actions. They commented that federal law does not require the commission to adopt this provision to obtain federal authorization.

The commission responds that EPA and federal courts interpret the Clean Water Act and CFR §123.27(d) and §145.13(d) to allow states to choose between two options, to provide either intervention as of right or permissive intervention in enforcement hearings. Texas has chosen the permissive intervention option, under which the state agrees not to oppose intervention where it may be authorized by statute, regulation, or rule. To use this option, however, the state law or rules must allow some meaningful opportunity for permissive intervention in both civil and administrative enforcement actions (*Natural Resources Defense Council v. EPA*, 859 F.2d 156 (D.C. Cir. 1988)). Section 80.109 creates the intervention option at the administrative level. The commission and the EPA have exchanged letters on these issues, and the EPA letter evidences both EPA's conviction that the commission must meet the authorization requirements described here and its agreement that the adopted rules meet those requirements.

Henry, Lowerre commented that §80.109(b)(6)(C) does not give assurance that the commission will allow intervention by a third party in certain enforcement proceedings. The commenter argues that the rules also do not assure a third party will be able to participate in an effective manner.

The commission responds that the rules provide ample and meaningful intervention opportunity. It is confident that the SOAH judges will follow these rules as adopted.

An individual commented that while the UIC and TPDES programs were mentioned in §80.109(b)(6)(C), the RCRA program was not and expressed concern that there had been an oversight.

The federal regulations governing the RCRA program do not contain the same requirements compared to the regulations for the UIC and NPDES programs. Compare 40 CFR §123.27(d) with 40 CFR §271.17(d). The commission rules are intended to track the federal requirements.

An individual suggested that "permissive intervention" be defined in the rules, and commented that the standard for permissive intervention found in §80.109 does not have anything to do with justiciable interest because it appears to be whether or not the intervention will unduly delay or prejudice the rights of the original parties.

The commission has made no changes in response to this comment. The significance of "permissive intervention" is explained in the next sentence of the rule. The commission notes that the adopted rule is patterned after the federal rules of civil procedure, Rule 24(b). The commission's response to the comments on the takings analysis provides further analysis on why the commission adopts the permissive intervention standard.

TCC and Brown McCarroll requested that §80.115(a) be amended to state that no party except the executive director (that is, not the Public Interest Counsel, the respondent, nor permissive intervenors) may seek to amend or add to the penalties or technical requirements sought in an enforcement action. Brown McCarroll pointed out that as the state's enforcement authority, the commission has exclusive authority to assess penalties and recommend technical requirements and that nowhere in the Texas Water Code is any private party given such authority. Henry, Lowerre commented that the rule would mean that without the executive director's explicit approval, an intervenor could not present evidence of additional violations. An individual commented that the rule would not allow intervening parties to amend or add to the violations alleged in the petition. Texas Eastman and Exxon supported this provision as written.

The commission has made no changes in response to these comments. The purpose of the rule is to comply with the federal requirement for a meaningful opportunity to participate by intervention. The commission believes that such meaningful participation by individual members of the public is best directed toward the remedial aspects of the proceeding. Therefore, the rule allows the intervenors to seek to amend or add to the penalties and technical requirements to be imposed. Concerning the comment on an intervenor's offer of evidence of additional violations, the adopted rule does not address its admissibility. The administrative law judge will rule on any such offers of evidence based on other applicable law. Concerning the comment on allowing intervenors to amend or add violations alleged in the petition, the commission concludes that the proposed change would run afoul of due process requirements, statutory requirements, and other commission rules. Texas Water Code, §7.054 and §7.055 specify that the executive director shall prepare the preliminary report that specifies the alleged violations and that the executive director shall give notice of the preliminary report to the person charged within ten days. The person charged may request a hearing on the alleged violations in the preliminary report under §7.058. Commission rules at §80.105 similarly state that the scope of a hearing on an enforcement matter is set by the executive director's preliminary report. The commission believes that allowing for the consideration of additional alleged violations added outside of these procedures would violate these requirements.

TCC and Brown McCarroll requested that the commission not adopt proposed §80.127(f) concerning admitting public comment and the executive director's responses into the evidentiary record for certain applications. The commenters assert that this action is inappropriate because the comments are not sworn testimony, nor subject to cross-examination. Brown McCarroll pointed out that there is no requirement that public comment or the responses thereto meet the requirements for the admissibility of evidence set out in §80.127(a) or the Texas Rules of Civil

Evidence. They argue that the admission of public comment would violate requirements for the admissibility of evidence, including the requirements in the APA, Texas Government Code, §2001.081. The commenters suggested that a separate rule should be proposed that simply calls for public comment to be part of the record in a case. Henry, Lowerre commented that a rule that would allow the commission to consider public comment in a contested case hearing would violate Texas law. OPIC also questioned whether the commission may adopt a rule that has the effect of directing that public comment shall be admitted into the evidentiary record. OPIC commented that the proposed §80.127(f) creates a tension between that subsection and §80.127(a)(2) and (3) that testimony may be received only from persons under oath. OPIC expressed its concern that a person, wishing to avoid the requirements imposed on the admissibility of evidence, could offer its case as public comment. An individual commented that because public comments cannot be considered as evidence in the contested case that the commission's efforts in the proposed rules are meaningless in that the comments will not really be considered.

The commission responds to the comments on §80.127(f) by making some changes to the proposed rule, as explained in the following paragraphs. Generally, however, the commission declines to make changes in response to public comment because the commission concludes the subsection is necessary to meet authorization requirements and because the subsection is consistent with Texas law. Under authorization requirements, the person who makes the final decision on a permit application must consider the public comment and respond to it. Under Texas law if there is a contested case hearing on the application, it is the commission (not the executive director) who makes the final decision on the permit application. Thus, to satisfy authorization requirements, the commission must consider the public comment and make a response to it. The adopted §80.127(f) ensures that the public comment and the executive director's responses are made part of the evidentiary record so that the commission's consideration of both is consistent with APA, §2001.141(c), which requires that findings of fact may be based only on the evidence and on matters that are officially noticed.

The commission disagrees that the adopted rule violates the requirements of APA, §2001.081 concerning the admission of evidence in a contested case hearing. The APA provides that the rules of evidence as applied in a nonjury civil case in a district court of the state apply to a contested case. The commenters are concerned that the admission into the evidentiary record of public comment and the executive director's responses violates the prohibition against hearsay found in the Texas rules of civil evidence. The commission concludes, however, that §80.127(f) is consistent with Texas law because the manner of admitting the evidence is consistent with the limited purpose for which it is admitted. Public comment will be admitted to show that public comment was received and how the executive director considered and responded to each comment in formulating the draft permit or revisions to the draft permit. Legal and policy arguments made in public comment will be considered by the judge and the commission in making the permit decisions. The executive director's responses to public comment, when properly offered under applicable standards governing administrative proceedings, will be admitted into evidence under §80.127(f) for all purposes, including for the truth of the matters stated therein. In contrast, the text of public comment, as it relates to fact issues, will be admitted under §80.127(f) for the limited purpose of establishing what public comment was received, so that the judge and commission can evaluate the responses and evidence offered and received from the parties on those issues. Unless also offered by a party to the proceeding for other purposes and admitted by the judge under other commission rules, the public's comments will not be evidence of the truth of the facts asserted in them.

The commission concludes that the executive director's response to comments is admissible under Texas Rule of Civil Evidence 803(8), the hearsay exception for public records and reports. The executive director's responses qualify under two of the exceptions in that rule: specifically, the responses are matters observed under a duty imposed by law as to which matters there is a duty to report, and the responses are factual findings resulting from an investigation made pursuant to authority granted by law. Moreover, the staff members who prepare the responses will be available at the hearing for cross-examination.

The commission concludes that public comment is admissible under the Texas rules of civil evidence for the limited purposes allowed under §80.127(f). In *Lewis v. Southmore Savings Association*, the Texas Supreme Court commented that the hearsay rule applies in administrative hearings but that considerable discretion is permitted in allowing evidence to be introduced by virtue of the liberal exceptions to the rule (480 S.W.2d 180, 186 (Tex. 1972)). In that case, the court ruled that the administrative agency had properly admitted into evidence expert testimony including the "expert's hearsay," in the form of the expert recounting his earlier interviews with persons that formed a part of the basis of his expert opinion. The court noted that the expert's hearsay is not evidence of the fact but only bears on his opinion, and that the administrative agency should acknowledge its limited purpose and observe it. In commission proceedings on certain applications the commission rules require that the executive director consider public comment and make a response to it, and so public comment will necessarily form some part of the executive director's "expert's hearsay."

The commission concludes that in the certain proceedings not only should public comment and the executive director's responses be admitted into the evidentiary record, but also that admission should be by rule rather than rely on a case-by-case ruling. The commission reaches this conclusion because it is necessary for authorization purposes that public comment will be considered. Also, a rule is preferable because it adds predictability to the contested case process. The commission concludes that it is not creating a hearsay exception but merely recognizing exceptions that already exist. The adoption of the rule makes sure that all persons know that public comment and the executive director's responses will be admitted into evidence for the purposes stated previously and that the parties will have an opportunity to respond and to present whatever rebuttal or supporting evidence they choose.

The commission does make some changes in response to the commenters. The commission clarified §80.127(f) to state that the public comment and the executive director's responses shall be admitted into the evidentiary record. Also, the rule was clarified by deleting some of the proposed rule language so that it is clear that responses other than the executive director's will not be by rule admitted into the evidentiary record. However, the commission believes that the parties must be afforded an opportunity to respond and present evidence (as is required by APA, §2001.051), and so this language is added here as a reminder of the parties' rights.

The commission believes that the previous discussion should address OPIC's concerns as well. A person would likely not attempt to avoid the requirements for the admissibility of evidence by submitting his case as public comment. While the person's public comment would be admitted into evidence under §80.127(f) it would be admitted for the limited purposes of putting before the judge and commission the policy and legal arguments made therein and, if facts were alleged, of showing that the comment was made; it would constitute no evidence that the facts in the comment were true. The person's submission of public comment would be successful in the sense that the executive director considered it in preparing the draft permit, any proposed changes to the draft permit, and his responses to public comment. But, if the person wished to rebut the truth of the matters asserted in the contested case hearing the person would still have to become a party and offer admissible evidence to establish the truth of the comment.

Henry, Lowerre commented that if the commission adopts the proposed rules, then Texas Health and Safety Code, §361.069, would improperly limit participation by state and federal agencies. Section 361.069 provides that in making a determination on the question of land use compatibility, the commission shall not consider the position of a state or federal agency unless the position is fully supported by credible evidence from that agency during the public hearing.

The commission acknowledges that there could be some confusion raised by the fact that both authorization requirements and Texas Health and Safety Code, §361.069, speak of "considering" information. The commission's responses to commenters in this preamble explain how the commission will "consider" public comment under the adopted rules, which also applies to public comment by governmental agencies. In contrast, the commission concludes that in the limited circumstances that §361.069 applies, the commission will "consider" the position of a state or federal agency only if the position is fully supported by credible evidence from that agency. The commission concludes that this requirement means that the commission may adopt the position of an agency only if the position is supported by evidence that was offered by the agency and admitted for the truth of the matters stated therein.

Texas Eastman requested that §80.127(f) be harmonized with §55.25(b)(1) so that it states that the executive director must place into the record his or her responses to the "significant" public comment.

The commission has made no changes in response to this comment. The commission believes that the change is unnecessary because §55.25 in part defines what is the required response to public comment. Thus, there is no need to define the requirement again in §80.127(f).

OPIC commented that the proposed §80.127(f) conflicts with the current rule §80.111, which provides that public comment shall not be considered as evidence in the record.

The commission agrees with OPIC that §80.127(f) as proposed could have created confusion. The commission adopts a revised §80.127(f) that specifies that the subsection supersedes and controls any conflict between the subsection and §80.111 (relating to Persons not Parties) concerning the admission of public comment into the evidentiary record.

TCC requested that the proposed changes to §80.251 concerning the judge's proposal for decision on certain types of applications not be adopted. TCC referred to its comments on proposed §80.127(f) that public comment should not be part of the evidentiary record and stated that therefore public comment should not be a basis for the judge recommending changes to the draft permit. Henry, Lowerre commented that the proposed changes would violate Texas law. Brown McCarroll commented that the proposed rule seems to contemplate a judge's proposed order that recommends changes to the draft permit that are separate and apart from the judge's proposed findings of fact and conclusions of law. Brown McCarroll commented that this would violate APA, §2001.141, which states that findings of fact must be based on evidence and on matters that are officially noticed. OPIC requested clarification on §80.251 as to the legal authority for treating public comment as evidence for the purposes of creating an administrative law judge's record of decision, or other clarification as to how public comment is to be included in the record pursuant to the APA.

The commission has made no changes in response to these comments. The commission believes that the previous response to the comments on §80.127(f) also responds to the comments here, but supplements the response to explain the use of public comment in contested case hearings.

As noted previously, the commission concludes that the admission into the evidentiary record of public comment and the executive director's responses under §80.127(f) is a proper exercise of the commission's authority. Once public comment and the executive director's responses are in the evidentiary record, it is appropriate for the SOAH judge to recommend proposed changes to the draft permit after considering the public comment and the executive director's responses to public comment. Such proposed changes would be made consistent with the requirements of APA, §2001.141 that findings of fact must be based on evidence and on matters that are officially noticed. Public comment is admitted in evidence under §80.127(f) for the limited purposes of establishing what public comment was received.

Public comment will be admitted for consideration of the legal and policy arguments made in public comment. Public comment will be admitted to show that public comment was received and how the executive director considered and responded to each comment in formulating the draft permit or revisions to the draft permit. The executive director's responses will be admitted in evidence under §80.127(f) for all purposes. The parties will be allowed to respond and present evidence on the issues raised in public comment, and such offers of evidence will be admitted in evidence if the judge (and ultimately the commission) rules that the evidence should be admitted under applicable law. These latter rulings on offers of evidence will not be considered under §80.127(f). On the basis of all of this evidence the judge may properly recommend changes to the draft permit. The judge (and ultimately the commission) will consider the law and policy arguments made in public comment. Any recommendation based on evidence must be consistent with the purposes for which the evidence was admitted. Public comment is not admitted in evidence under §80.127(f) for the truth of factual matters stated therein and so the judge (and ultimately the commission) may not base his or her recommendations on the factual allegations in public comment. Of course, the judge may base his or her recommendations on other evidence properly offered by a party and admitted for the truth of the matters stated therein.

Finally, to respond to the question posed by Brown McCarroll, the commission intends that a judge's recommendations shall

be made in the traditional fashion under the APA, that is, by submitting a proposal for decision together with a draft order containing findings of fact and conclusions of law, all based on the evidence. There will be no separate procedure for considering public comment. When the commission issues its final order, it will be accompanied by the commission's responses to public comment which will be consistent with the findings of fact and conclusions of law.

Brown McCarroll and TCC objected to the adoption of §80.254. They commented that permissive intervention in administrative enforcement hearings is not required for authorization, thus this section on processing a settlement agreement in an enforcement case and comments on the settlement is not necessary. Henry, Lowerre commented that §80.254 does not define "settlement."

The commission responds to the first comment in its response to comment on the takings analysis. Concerning the definition of "settlement," the commission does not believe that a definition is needed because the term has a well understood meaning– the resolution of issues in controversy by agreement instead of adjudication. The commission notes that the commenter did not suggest a definition for the commission's consideration.

Exxon commented on §80.254 and requested that this section be amended to allow the commission to remand an enforcement case for further negotiations if the commission does not approve of a proposed settlement. The commenter argued that the commission's options should not be limited to approving the settlement or remanding for a hearing.

The commission has made no changes in response to this comment. If the commission does not approve of a settlement, then the case should proceed to hearing. After the referral for hearing, the parties can always investigate a new settlement.

Texas Eastman commented on §80.254 concerning the commission's review of a settlement agreement in an enforcement case. The commenter suggested the section specify the standard of review and recommended a standard that is deferential to agreements. The commenter also noted that the proposal published in the *Texas Register* did not publish this section in bold type, and suggested the commission ensure that the section published in the *Texas Register* showing the adopted rules be in bold.

The commission has made no changes in response to this comment. A specified standard of review is not appropriate under these circumstances because the commission must assure itself that any recommended settlement is consistent with law and commission policy and is in the best interest of the state.

Additionally, the proposal as published was in accordance with the *Texas Register* Form and Style Manual, that is, the text of whole new sections is not bolded. Only those amendments that consist of new language to current sections are bolded. However, as mandated by Senate Bill 1715, 75th Legislature, the *Texas Register* will begin underlining all new language in rule proposals, including the text of new sections, once the Secretary of State's Office adopts its final rule (the rule was proposed in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10203)).

OPIC requested that §80.254 be amended so that OPIC has the opportunity to file comment on a proposed settlement of a contested enforcement case, even when a judge has not yet been assigned to the case. OPIC also commented that current §70.5 should be amended so that it is consistent with §80.254.

The commission has made no change in response to this comment. The commission believes the proposed change is unnecessary in light of Texas Water Code, §7.075, as created by Senate Bill 1876, 75th Legislature, which requires publication in the *Texas Register* and a 30-day period for public comment on all proposed settlements of administrative enforcement cases. This should give OPIC ample opportunity to submit comment. The commission disagrees that the statement in §70.5 that an enforcement case may be "resolved informally" is in need of amendment. This section merely suggests that an enforcement case may be resolved by settlement rather than by following all of the requirements of a contested case hearing. This is consistent with §80.254.

An individual commented on the restrictions in §80.254 on how a person granted permissive intervention in an enforcement case may participate. The commenter suggested that the restrictions violate Texas law. The commenter recommended changes so that an intervenor could object and present evidence on a settlement proposed by the executive director and the respondent.

The commission has made no changes in response to the comment, but takes this opportunity to clarify the participation of intervenors in enforcement cases. Under §80.254 the judge must give an intervenor who dissents from a proposed settlement a reasonable time to file comments. The judge will then forward the settlement and the comments to the commission for the commission's consideration and decision. The commission's decision will be based on the settlement and the other evidence in the record, just as in any other contested case. Texas law does not require permissive intervention in an enforcement case by the executive director against a respondent. As stated in the explanation of the adopted rules, the commission adopts these rules (including §80.109(b)(6)(C) and §80.254) because the EPA is resolute that the authorization requirements include these requirements and convinced that the rules adopted here meet those requirements. The commission intends that the rules specify all of the permissive intervenors' rights; that is, that the right of an intervenor to participate in the contested case hearing is limited to those actions specifically authorized in the rules and amendments adopted today.

Texas Eastman commented on §80.274, concerning agreement by the parties to waive the requirement to file a motion for rehearing. The commenter argued that the section should be revised to specify that the parties' agreed effective date for the order must be no earlier than the date the order is signed. The commenter also noted that the proposal published in the *Texas Register* did not publish this section in bold type, and suggested the commission ensure that the section published in the *Texas Register* showing the adopted rules be in bold.

The commission responds that the proposal published in the *Texas Register* specified that the agreed effective date must be no earlier than the date the order is signed, and that the adopted rule also contains the requirement. The commission notes that this section allows the parties to agree to an effective date for a commission order, which has the effect of waiving the requirement to file a motion for rehearing. This section, and SB 637, 75th Legislature, on which it is based, do not allow the parties to agree to shorten the time period for filing a motion for rehearing as was suggested by the commenter. Regarding the

latter comment, please see the response to §80.254 regarding the publication of the proposal.

Subchapter C. Hearing Procedure

30 TAC §§80.105, 80.109, 80.115, 80.127

STATUTORY AUTHORITY. The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission; and under Texas Government Code, §2001.144 and §2001.145.

§80.127. Evidence.

(a)-(e) (No change.)

(f) Public comment. In Resource Conservation and Recovery Act, underground injection control, and Texas Pollutant Discharge Elimination System permit cases for which the commission has permitting authority by authorization from the federal government, all public comment on the application received by the commission during the public comment period and the executive director's responses shall be admitted into the evidentiary record. The parties shall be allowed to respond and to present evidence on each issue raised in public comment or the executive director's responses. This subsection supersedes and controls any conflict between this subsection and §80.111 of this title (relating to Persons not Parties) concerning the admission of public comment into the evidentiary record.

(g) Invoking the "rule." At the request of the party, and subject to the discretion of the judge, witnesses may be placed under "the rule" as provided by, and subject to the conditions of, Texas Rule of Civil Procedure 267 and Texas Rule of Evidence 613.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714834
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 1, 1997
Proposal publication date: August 8, 1997
For further information, please call: (512) 239–1966

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Subchapter F. Post Hearing Procedures

30 TAC §§80.251, 80.254, 80.271, 80.273, 80.274

STATUTORY AUTHORITY. The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission; and under Texas Government Code, §2001.144 and §2001.145.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714835
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 1, 1997
Proposal publication date: August 8, 1997
For further information, please call: (512) 239–1966

♦ ♦ ♦

Chapter 106. Exemptions From Permitting

Subchapter P. Plant Operations

30 TAC §106.376

The Texas Natural Resource Conservation Commission (commission) adopts new §106.376, concerning the exclusion of decorative chromium electroplating facilities from the preconstruction air permitting requirements of the Texas Health and Safety Code, the Texas Clean Air Act, §382.0518. The section is adopted with changes to the proposed text as published in the August 19, 1997, issue of the *Texas Register* (22 TexReg 8034).

EXPLANATION OF ADOPTED RULE. Section 106.376 creates for decorative chrome platers a new specific permitting exemption for facilities that otherwise would require a permit or authorization by a general exemption. This exemption will protect public health and provide businesses with an alternative to permitting, especially when the minimum 100-foot distance requirement of general exemption 30 TAC §106.262 (previously Standard Exemption (SE) 118) cannot be met. Creation of this exemption is complementary to the adoption of the new Maximum Achievable Control Technology (MACT) standard for chrome under 30 TAC §113.190.

The mechanism provided by the adopted exemption will allow the operation of decorative chrome plating facilities in compliance with state law without the expense in time and money of obtaining a permit, while continuing to be protective of public health and the environment. A focus group composed of representatives of the New Source Review Permits Division, Toxicology and Risk Assessment, Small Business Assistance Program, Office of Policy and Regulatory Development, Field Operations, and Legal Division evaluated the scope of the affected facilities, effects on the regulated community, health effects, and protectiveness of the exemption. Modeling of the potential fugitive chromium emissions using a conservative approach indicated that the emissions were insignificant and were not expected to pose a health threat to adjacent sensitive receptors. The engineering analysis concluded that the 5,000 ampere rectifier cumulative ceiling was protective of public health. In order to prevent the stacking of processes by the use of a standard exemption, this exemption may not be used at any site in conjunction with other chrome plating operations such as hard chrome plating, or chromic acid anodizing operations. In other words, the commission will not authorize an existing permitted, exempted, or grandfathered chrome plating or chromic acid anodizing operation to increase its emissions at any site by using the adopted exemption for decorative chrome plating facilities.

It does not prohibit a decorative chrome plating operation from adding more than one rectifier unit at a site as long as the 5,000 ampere cumulative ceiling is not exceeded. All associated background materials for this review, including the technical review, computer modeling, responses to requests for comment, calculations, and technical assumptions, are available for public review by contacting the New Source Review Permits Division.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this rule according to Texas Government Code, §2007.043, and has determined that this rule will not create a burden on private real property. The Texas Health and Safety Code, Texas Clean Air Act, Chapter 382, requires facilities to obtain a permit or qualify for a standard exemption prior to construction or modification. Through the creation of the standard exemption for chrome plating operations, the commission is not creating a regulatory burden, but is simplifying compliance with an existing statutory requirement for a class of facilities that do not make a significant contribution of air contaminants to the atmosphere.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the goals and policies of the CMP to protect and enhance air quality in the coastal area. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, in that the emissions allowed by this exemption will have a negligible impact upon the air quality in the coastal area.

HEARING AND COMMENTERS. A public hearing on this exemption was held on September 16, 1997, at 10:00 a.m. in Austin. During the public comment period, which closed September 18, 1997, the United States Environmental Protection Agency submitted a letter stating that on the basis of its evaluation, it had no items of concern. In response to staff comments, the rule was changed to add the words, "or chromic acid anodizing" in the last sentence as the phrase was inadvertently omitted from the initial publication, but was included in the discussion in the published preamble with regard to which operations at a site would result in the unavailability of the exemption. No other comments were received.

STATUTORY AUTHORITY. The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general comprehensive plan for the proper control of the state's air; and §382.057, which provides the commission with the authority to exempt certain types of facilities that will not make a significant contribution of air contaminants to the atmosphere from the requirements of Texas Health and Safety Code, §382.0518. This exemption covers only facilities with insignificant emissions and thus complies with §382.057.

§106.376. Decorative Chrome Plating.

Decorative chromium electroplating operations that have a maximum combined rated capacity for all decorative chrome plating rectifiers of not more than 5,000 amperes and which use a fume suppressant or other equivalent control as sufficient to meet §113.190 of this title (relating to Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63, Subpart N)) are exempt. This exemption may not be used at any site where other chrome plating or chromic acid anodizing operations are conducted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714785
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: November 26, 1997
Proposal publication date: August 19, 1997
For further information, please call: (512) 239–1966

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Chapter 114. Control of Air Pollution from Motor Vehicles

The commission adopts the repeal of Chapter 114, §§114.1, 114.3-114.7, 114.13, 114.23, 114.25, 114.27, and 114.29-114.40, concerning Control of Air Pollution From Motor Vehicles; a new Chapter 114, concerning Control of Air Pollution From Motor Vehicles, §§114.1-114.5, concerning Definitions; §§114.20-114.21, concerning Motor Vehicle Anti-Tampering Requirements; §§114.50-114.53, concerning Vehicle Inspection and Maintenance; §114.100, concerning Oxygen Requirements for Gasoline; §§114.150-114.157, concerning Low Emission Fleet Vehicle Requirements; §§114.200-114.202, concerning Vehicle Retirement and Mobile Emission Reduction Credits; and §§114.250, 114.260, and 114.270, concerning Transportation Planning; and a revision to the State Implementation Plan.

These repeals and new sections are adopted without changes to the proposed text as published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8896) and will not be republished.

EXPLANATION OF ADOPTED RULES Several new state and federal requirements for the control of air pollutants from motor vehicles must be incorporated into Chapter 114 within the next 12 months. The implementation of these requirements will require several rulemaking efforts, some of which will be on overlapping, but not necessarily simultaneous schedules. Reformatting Chapter 114 into program specific subchapters without substantial technical changes will allow each program to be revised independently of the others, thus accommodating overlapping schedules. The renumbered sections also create a cleaner, more logical organization.

The new Chapter 114 will be divided into seven new subchapters (A through G). Subchapter A, §§114.1-114.5, contains the definitions for the entire chapter. The definitions were taken from several existing sections and placed into §114.1 for general

definitions and four other sections, §§114.2-114.5, which cover major mobile source program definitions. Each of the remaining six subchapters contains a specific requirement which pertains to specific motor vehicle programs. Subchapter B, §§114.20-114.21, contains the requirements for the motor vehicle anti-tampering program. New §114.20 does not contain the original subsection (e), concerning leaded gasoline, because leaded fuel has been banned for on-road sales by the FCAA beginning December 31, 1995. Subchapter C, §§114.50-114.53, contains the requirements for the vehicle inspection and maintenance program. Subchapter D, §114.100, contains the requirements for the oxygenated fuels program. Subchapter E, §§114.150-114.157, contains the requirements for the low emission fleet vehicle program. Subchapter F, §§114.200-114.202, contains the requirements for the vehicle retirement and mobile emission reduction credits program. Subchapter G, §§114.250, 114.260, and 114.270, contains the requirements for the transportation planning program. Section 114.250, concerning Memorandum of Understanding (MOU) with the Texas Department of Transportation, contains the MOU as an exhibit under subsection (c). The Mobile Source Section is planning to incorporate the MOU into Chapter 7, concerning Memoranda of Understanding, in a follow-on rulemaking.

Finally, this rulemaking is a regulatory reform action which incorporates numerous editorial changes to ensure the chapter is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone per commission guidelines.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to reorganize Chapter 114, by creating subchapters and reorganizing the sections into the new subchapters, in order to facilitate implementation of further rule revisions by the state. Promulgation and enforcement of this reorganization will not affect private real property.

COASTAL MANAGEMENT PLAN The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area, (31 TAC §501.14(q)). This rule does not change existing requirements which already comply with regulations at Title 40, CFR, and is therefore consistent with this policy.

HEARING AND COMMENTERS A public hearing on this proposal was held in Austin on September 30, 1997. The comment period closed on October 6, 1997.

The Environmental Protection Agency (EPA) submitted general comments which supported the removal of the leaded gasoline dispensing labeling requirement.

The EPA also submitted specific comments regarding their proposed disapproval of portions of the state's anti-tampering rules in §114.1 and §114.5 (now §114.20 and §114.21). EPA suggested that the state should make additional revisions to its antitampering rules to make them consistent with the Clean Air Act provisions regarding exclusions and exemptions.

Although the commission acknowledges that the EPA is proposing disapproval of portions of the state's anti-tampering rules, this rulemaking merely renumbered these sections without making technical changes to the existing program. Therefore, the commission will defer revisions of the anti-tampering rules until the next rulemaking.

EPA stated that they were planning to disapprove the Texas Clean Fuel Fleet program due to changes in the underlying legislation and EPA concerns about the state's equivalency determination. EPA suggested that the state should consider revisions to its clean fuel fleet program.

Although the commission acknowledges that the EPA is proposing disapproval of the Texas Clean Fuel Fleet program, this rulemaking merely renumbered these sections without making technical changes to the existing program. Therefore, the commission will defer revisions of the clean fuel fleet rules until the next rulemaking.

Finally, EPA suggested that the state consider a revision to the vehicle retirement rules which require IM240 testing in view of the state's cancellation of its IM240 program.

The commission acknowledges the need to review and possibly revise the vehicle retirement rules which require IM240 testing, however this rulemaking merely renumbered these sections without making technical changes to the existing program. Therefore, the commission will defer revisions of these rules until the next rulemaking.

30 TAC §§114.1, 114.3–114.7, 114.13, 114.23, 114.25, 114.27, 114.29–114.40

STATUTORY AUTHORITY The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714845
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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Proposal publication date: September 5, 1997
For further information, please call: (512) 239–1970

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Subchapter A. Definitions

30 TAC §§114.1–114.5

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purpose of this rulemaking is to reformat Chapter 114 into subchapters. Proposed Subchapter B, concerning Motor Vehicle Anti-Tampering Requirements, does not contain the leaded gasoline requirements of the former Section 114.1(e); therefore, Subchapter B is also proposed under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examinations of records; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 7, 1997.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1970

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Subchapter B. Motor Vehicle Anti-Tampering Requirements

30 TAC §1140.20, §114.21

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purpose of this rulemaking is to reformat Chapter 114 into subchapters. Proposed Subchapter B, concerning Motor Vehicle Anti-Tampering Requirements, does not contain the leaded gasoline requirements of the former Section 114.1(e); therefore, Subchapter B is also proposed under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examinations of records; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla
Director, Legal Division
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Subchapter C. Vehicle Inspection and Maintenance

30 TAC §§114.50–114.53

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla
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Subchapter D. Oxygen Requirements for Gasoline

30 TAC §114.100

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Low Emission Fleet Vehicle Requirements

30 TAC §§114.150–114.157

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla
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For further information, please call: (512) 239–1970

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Subchapter F. Vehicle Retirement and Mobile Emission Reduction Credits

Vehicle Retirement

30 TAC §114.200

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1970

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Mobile Emissions Credits

30 TAC §114.201, §114.202

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1970

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Subchapter G. Transportation Planning

30 TAC §§114.250, 114.260, 114.270

The new rules are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla
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Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1970

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Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§305.2, 305.22, 305.23, 305.25, 305.533, and 305.535, concerning Consolidated Permits. Sections 305.22, 305.23, 305.25, 305.533 and 305.535 are adopted with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9434). Section 305.2 is adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULE

The amendments to Chapter 305 are intended to make commission rules consistent with federal requirements of the National Pollutant Discharge Elimination System (NPDES) program. These changes will facilitate assumption of the NPDES program by the state of Texas from the U.S. Environmental Protection Agency (EPA). Existing §305.2 defines "severe property damage" as substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. The change to §305.2 is intended to clarify that "severe property damage" does not mean economic loss caused by delays in production, consistent with 40 Code of Federal Regulations (CFR) §122.41(m)(1)(ii) governing authorized bypasses.

Existing §§305.22, 305.23, and 305.25 provide the procedures by which a temporary or emergency order or executive director authorization may be issued. Sections 305.22 and 305.23 provide that a person seeking to obtain a temporary or emergency order to discharge waste or pollutants into or adjacent to water in the state shall submit a sworn application to the commission containing information that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production), or to make necessary and unforeseen repairs to a facility. The amended rules delete the parenthetical text relating to economic loss caused by delays in production. The amended §305.22(b) addresses the procedures governing discharges adjacent to waters in the state. Further, amendments to §§305.22, 305.23 and 305.25 provide that, once Texas has been authorized to administer the NPDES program, neither

temporary or emergency orders nor executive director authorizations may be issued for discharges into waters in the state by TPDES permitted facilities on the ground of economic loss, as set forth in the proposed rule, or making necessary and unforeseen repairs to a facility. The deletion of these grounds complies with federal requirements, which authorize bypasses of partially or untreated wastewater to occur only if the discharge is unavoidable to prevent loss of life, personal injury or severe property damage.

The amendments to §305.533 (relating to Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs) clarifies the transfer of jurisdiction of federally-issued NPDES permits to the commission.

Additionally, the commission has amended §305.535 (relating to Bypasses from TPDES Permitted Facilities) to clarify that the section pertains only to TPDES permits issued by the commission after assumption of the NPDES program from the EPA. The amendments also specify that neither "severe economic loss" nor "necessary and unforeseen repairs" can be a basis to authorize a bypass, consistent with 40 CFR §122.41(m). Additionally, the section is being amended to attain consistency with NPDES requirements by adding a new subsection (d) which would establish secondary treatment standards for publicly owned treatment works required to have TPDES permits. The amendment establishes minimum standards for the percentage of the removal of certain pollutants, including biochemical oxygen demand, total suspended solids, and pH. The subsection also specifies certain exceptions to these standards consistent with federal requirements contained in 40 CFR §§123.25(a)(15), 123.25(a)(36), and 133.102.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to attain consistency with federal NPDES program requirements and meet federal requirements governing the process of delegation of the NPDES program to the state of Texas. The rules will substantially advance this specific purpose by removing "severe economic loss" and "necessary and unforeseen repairs" as a basis for TPDES permit holders to obtain temporary and emergency orders and executive director authorizations to discharge pollutants into waters in the state, clarifying jurisdictional issues after delegation, and establishing treatment requirements for domestic wastewater dischargers. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because this rulemaking is not the producing cause of a reduction in the market value of the affected private real property. Further, the following exception to the application of Chapter 2007 of the Texas Government Code, set forth at Texas Government Code Annotated §2007.003(b), applies to these rules: the rulemaking is an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking is consistent with the applicable CMP goals and policies.

HEARINGS AND COMMENTERS

A public hearing was held in Austin, Texas on October 7, 1997. The public comment period closed on October 20, 1997. No oral or written comments were received during the public hearing.

One written comment was received from Texas Utilities Services, Inc., on behalf of Texas Utilities Electric Company, Texas Utilities Fuel Company, Texas Utilities Mining Company, and ENSERCH, generally in support of the proposed rule.

GENERAL COMMENTS

Texas Utilities Services, Inc. indicated its support for the rulemaking. The commenter stressed the importance of authorizing emergency or temporary orders for wastewater discharges in cases where the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss. The commenter additionally indicated this is a significant issue in times of drought when water temperatures may be elevated, presumably in cooling water reservoirs used by the utility. The commenter also noted that the commission would be conducting a separate rulemaking in the near future to implement Senate Bill (SB) 1876, effective on September 1, 1997, which governs the issuance of emergency and temporary orders.

The commission responds and concurs with the commenter that these authorizations are important. The amended rule as it was proposed was devised to maximize the ability of the commission to authorize temporary or emergency discharges and only limits certain discharges which would occur directly into waters in the state. There has been no change in the rule to restrict temporary or emergency discharges which might be authorized adjacent to waters in the state. The commission notes that a finding of severe property damage, which could form the basis for authorizing a temporary or emergency discharge, is maintained in the rule.

The commission also responds that the rulemaking for SB 1876 will commence at the end of 1997 or early 1998, and will set forth the commission's new authorities to grant emergency and temporary orders. The changes made in this rulemaking, which apply only to facilities required to have TPDES permits, are consistent with the provisions of SB 1876.

The amendments in §§305.22, 305.23, and 305.25 have been revised for clarity, and to replace language referring to NPDES program delegation with language that more accurately portrays the action the commission is seeking from the EPA. Section 305.533 has been amended for clarification purposes.

The amendment of §305.535, which proposed the addition of a new subparagraph (5)(C), included a reference to a federal regulation, 40 CFR §35.2005(b)(16). Instead of referring to the federal regulation, the commission is adopting the amendment to actually specify in the rule the definitions and criteria from the federal regulation. This revision does not in any way change the rule's requirement and only makes the requirements more clear.

Sections 305.22 and 305.23 have also been amended to delete the parenthetical text that excluded economic loss caused by delays in production as a basis for an emergency or temporary order in non-TPDES situations. This parenthetical language was originally designed to comply with federal requirements necessary for Texas's assumption of NPDES permitting authority. Because the removal of "severe economic loss" from the list of grounds for which discharges from facilities subject to TPDES permit requirements may be authorized satisfies the

federal NPDES requirements, the parenthetical language is no longer needed.

After the rules were proposed, the commission determined that Sections 305.22(a), 305.23(a), 305.25(a) and 305.535(c)(1)(a) remained inconsistent with federal standards regarding authorized bypasses although the commission's stated purpose in changing these rules was to incorporate such standards as provided in 40 CFR §122.41(m). Accordingly, those sections have been further changed to delete the ground of "necessary and unforeseen repairs" as a basis for allowing a discharge of partially treated or untreated wastewater into water in the state by facilities subject to TPDES permits, as required by 40 CFR §122.41(m). With this revision, bypasses by TPDES facilities for necessary maintenance purposes will be allowed only under the circumstances described in §305.535(a), which allows bypasses to occur if necessary for essential maintenance to assure efficient operation but only if the effluent limitations are not exceeded. The deletion of "necessary and unforeseen repairs" eliminates inconsistency with the existing requirement that effluent limitations not be exceeded when necessary maintenance purposes is the ground for allowing the bypass.

In addition, a change has been made to the Takings Impact Assessment to include an explanation of an exemption of takings law that applies to this rule. This change does not affect the conclusion of the assessment that no taking has occurred; instead it more fully explains the reasons for the commission's actions.

Subchapter A. General Provisions

30 TAC §305.2

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law. The basis for the amendments is also contained in §26.121, which authorizes the commission to prohibit unauthorized discharges into and adjacent to waters in the state, and §5.509, which describes the circumstances under which the commission may issue an emergency or temporary order for the discharge of waste or pollutants into waters in the state. SUBCHAPTER A : GENERAL PROVISIONS §305.2 The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law. The basis for the amendments is also contained in §26.121, which authorizes the commission to prohibit unauthorized discharges into and adjacent to waters in the state, and §5.509, which describes the circumstances under which the commission may issue an emergency or temporary order for the discharge of waste or pollutants into waters in the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on Novmber 10, 1997.

TRD-9715043
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: December 1, 1997
Proposal publication date: September 19, 1997
For further information, please call: (512) 239–4640

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Subchapter B. Emergency Orders, Temporary Orders, and Executive Director Authorizations

30 TAC §§305.22, 305.23, 305.25

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law. The basis for the amendments is also contained in §26.121, which authorizes the commission to prohibit unauthorized discharges into and adjacent to waters in the state, and §5.509, which describes the circumstances under which the commission may issue an emergency or temporary order for the discharge of waste or pollutants into waters in the state.

§305.22. Application for Orders or Authorizations to Discharge.

(a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into water in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or, if the State of Texas is not authorized to administer the NPDES program, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, for unreasonable economic loss to persons other than the applicant;

(2)-(8) (No Change.)

(b) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, adjacent to waters in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the area of or surrounding the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge;

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;

(7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and

(8) payment of appropriate application fees in accordance with §305.27 of this title (relating to Application Fees).

(c) If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories To Applications).

(d) If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsections (a) or (b) of this section before the date of the commission's public hearing to consider the authorization.

(e) This section does not apply to unpermitted facilities subject to TPDES regulation.

§305.23. Emergency Orders.

(a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:

(1) for discharges into water in the state, that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or, if the state of Texas is not authorized to administer the NPDES program, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) for discharges adjacent to any water in the state, that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(3) that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(4) that the estimate of the dates on which the proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

(5) that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.

(b)-(c) (No Change.)

§305.25. Executive Director Authorizations to Discharge.

(a) If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or, if the state of Texas is not authorized to administer the NPDES program, severe economic loss or to make necessary and unforeseen repairs to the facility; that there are no feasible alternatives to the discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant.

(b) If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility adjacent to waters in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility; that there are no feasible alternatives to the discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant.

(c) If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715044
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 1, 1997
Proposal publication date: September 19, 1997
For further information, please call: (512) 239–4640

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Subchapter E. Actions, Notice, and Hearing

30 TAC §305.106

The commission adopts the repeal of §305.106, concerning Response to Comments, without changes to the proposed text as published in the August 8, 1997, issue of the *Texas Register* (22 TexReg 7336). The purpose of the repeal is to remove duplicative requirements concerning responses to comments on draft permits and to complete the repeal of Chapter 305, Subchapter E.

EXPLANATION OF THE ADOPTED RULE. The commission adopts this repeal as part of its efforts to encourage public participation in the commission's proceedings (see also the

commission's adoption of rules changes in 30 TAC Chapters 55 and 80 in this edition of the *Texas Register*). This is consistent with state policy as stated in Texas Water Code, §5.112, which calls for the commission to develop policies to provide the public with opportunities to appear and speak on issues under its jurisdiction. The repeal is also intended to address public participation issues connected with federal permitting programs. Currently, the state's Resource Conservation and Recovery Act (RCRA) permitting program is under review by the United States Environmental Protection Agency (EPA), and private petitioners have filed a petition with the EPA seeking revocation of the commission's authorization to administer the underground injection control (UIC) program. Also, the commission has submitted to EPA an application for authorization to implement the National Pollutant Discharge Elimination System (NPDES) Program.

The commission believes that Texas Water Code, Chapter 26, which contains numerous sections that are intended to satisfy authorization requirements, evidences legislative directive that the commission's application for NPDES authorization is consistent with state policy to seek authorization. The commission and its predecessor agencies have pursued NPDES authorization for several years. Public participation has been an issue in NPDES negotiations and has become an issue in the RCRA and UIC programs because it has proven difficult to harmonize the federal requirements with Texas state law and commission rules. However, in an effort to overcome these difficulties, the commission has worked with EPA and ultimately reached an agreement that the rules changes adopted in this edition of the *Texas Register* will satisfy authorization requirements. The commission and the EPA have exchanged letters on these issues, and the EPA letter shows its interpretation that the commission must meet the authorization requirements described in the commission's adoption of the rule changes in Chapters 55 and 80 in this edition of the *Texas Register* and that those adopted rules meet those requirements.

The repeal eliminates public comment procedures that are duplicative to those contained in §55.25, concerning Public Comment Processing. The repeal will also complete the repeal of Chapter 305, Subchapter E, which was begun during the commission's revisions of the procedural rules.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this repeal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this repeal (and the adoption of rules changes in Chapters 55 and 80 in this edition of the *Texas Register*) is to establish a system for the commission's consideration of and response to public comments on applications and draft permits for certain federally authorized permit programs. The adopted rules will substantially advance these specific purposes by providing specific provisions on these matters. Promulgation and enforcement of the rules will not burden private real property which is the subject of the rules because they concern commission procedural rules. A "taking" is defined under the Private Real Property Rights Preservation Act as a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action. The rules do not require or provide for any restriction of an owner's use of real property; they concern only procedures for public comment and agency response to comment. Also, the rules are under two exceptions to the Private Real Property Rights Preservation Act: first, the rules fulfill an obligation mandated by federal law, and second, the rules advance health and safety, and impose no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rule is not subject to the CMP.

HEARING AND COMMENTERS. A public hearing on the proposed rule was held in Austin on September 8, 1997. The comment period closed September 8, 1997. No comments were received on the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714836
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 1, 1997
Proposal publication date: August 8, 1997
For further information, please call: (512) 239–1966

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Subchapter O. Additional Conditions and Prodecures fpr Wastewater Discharge Permits and Sewage Sludge Permits

30 TAC §§305.533, 305.535

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law. The basis for the amendments is also contained in §26.121, which authorizes the commission to prohibit unauthorized discharges into and adjacent to waters in the state, and §5.509, which describes the circumstances under which the commission may issue an emergency or temporary order for the discharge of waste or pollutants into waters in the state.

§305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs.

On the date of TNRCC assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program,

after the Environmental Protection Agency (EPA) approves the TPDES permit program, and the issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs, except that EPA shall retain jurisdiction over certain EPA-issued or proposed permits until their expiration which it has issued as may be specified in a state/federal Memorandum of Agreement. This provision does not affect the right of the EPA to issue NPDES permits for facilities which expired in the twelve months preceding the date of program assumption or to modify NPDES permits under Clean Water Act, §304(l). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, any requirements of the state-issued permit that are more stringent shall apply above and beyond those requirements contained in the corresponding EPA permit.

§305.535. Bypasses From TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities.

(a) Authorized bypass. The permittee may allow any bypass to occur from a TPDES permitted facility which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

(1) Anticipated bypass. In accordance with the procedures described in §§305.21, 305.22 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) if the permittee knows in advance of the need for a bypass, it shall submit prior notice.

(2) (No change.)

(c) Prohibition of Bypass.

(1) Bypass of untreated or partially treated wastewater is prohibited from a TPDES permitted facility, and the commission may take enforcement action against the permittee for bypass, unless all of the following conditions are met:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;

(C) (No change.)

(2) The commission may approve an anticipated bypass in accordance with the procedures described in §§305.21, 305.22 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, Application for Orders or Authorizations To Discharge and Executive Director Authorizations) after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

(d) Establishing Limitations, Standards, and Other Conditions in TPDES Permits.

(1) Permits for POTWs shall contain technology-based treatment requirements based upon secondary treatment and "best practical waste treatment technology."

(2) This paragraph describes the minimum level of effluent quality attainable by POTWs in terms of the parameters of five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), and pH. All requirements shall be achieved except as provided for in this subsection.

(A) For BOD5, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%. At the option of the commission, in lieu of the BOD5 parameter, the parameter five-day carbonaceous biochemical oxygen demand (CBOD5) may be substituted. For CBOD5, the 30-day average shall not exceed 25 mg/l and the 7-day average shall not exceed 40 mg/l. The 30-day average percent removal shall not be less than 85%.

(B) For TSS, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%.

(C) For pH, the effluent values for pH shall be maintained within the limits of 6.0 and 9.0 unless the POTW demonstrates that inorganic chemicals are not added to the waste stream as part of the treatment process and contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

(3) Treatment works shall be eligible for consideration of effluent limitations described for treatment equivalent to secondary treatment, as described in 40 CFR §133.105, if the BOD5 and TSS effluent concentrations consistently achievable through proper maintenance and operation of the treatment works exceed the minimum level of the effluent quality set forth in paragraph (2) (A) and

(2) (B) of this subsection, a trickling filter or waste stabilization pond is used as the principal process, and the treatment works provide significant biological treatment of municipal wastewater.

(4) The minimum TSS effluent quality concentration achievable with waste stabilization ponds may be adjusted in accordance with 40 CFR §133.103(c).

(5) The commission is authorized to substitute either a lower percent removal requirement or a mass loading limit for a percent removal requirement set forth in this subsection provided the permittee satisfactorily demonstrates that:

(A) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent effluent removal requirements cannot be met due to a less concentrated influent wastewater;

(B) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards (where the term "significantly more stringent limitations" means BOD5 and TSS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations of this subsection, if such limits would, by themselves, force significant construction or other significant capital expenditure); and

(C) The less concentrated influent wastewater is not the result of excessive inflow or infiltration (I/I). The determination of whether the less concentrated wastewater is not the result of excessive I/I will be based upon the following definitions and criteria:

(i) Excessive infiltration/inflow is the quantity of infiltration/inflow which can be economically eliminated from a sewer

system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(ii) Nonexcessive infiltration is the quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

(iii) Nonexcessive inflow is the maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715045
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: December 1, 1997
Proposal publication date: September 19, 1997
For further information, please call: (512) 239–4640

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 2. Rules of Practice and Procedure

31 TAC §§2.1–2.28

The General Land Office (GLO) adopts new Chapter 2 concerning general rules of practice and procedures in contested cases before the GLO, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9638). The text will not be re-published,

The adopted rules consolidate existing procedural rules which will be repealed upon adoption of Chapter 2.

The adopted rules establish a uniform procedure for the handling of contested cases before the GLO.

No comments were received on the proposed new rule.

The new procedural rules are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirement of all available formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 7, 1997.

TRD-9714903
Garry Mauro
Commissioner
General Land Office
Effective date: November 28, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 305–9129

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter S. Interstate Motor Carrier Sales and Use Tax

34 TAC §§3.441–3.443, 3.449

The Comptroller of Public Accounts adopts the repeal of §§3.441-3.443 and 3.449 concerning records required; doing business; computation of interstate motor vehicle sales and use tax; and yearly filing, without changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9228).

These sections are being repealed because the Tax Code provisions to which they relate, Chapter 157 of the Tax Code, were repealed effective September 1, 1997.

No comments were received regarding adoption of the repeals.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implements the Tax Code, §111.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714719
Martin Cherry
Chief,General Law
Comptroller of Public Accounts
Effective date: November 26, 1997
Proposal publication date: September 12, 1997
For further information, please call: (512) 463–4062

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Chapter 9. Property Tax Administration

Subchapter I. Validation Procedures

34 TAC §9.4026, §9.4028

The Comptroller of Public Accounts adopts the repeal of §9.4026 and §9.4028, concerning forms for appraisal of a dealer's motor vehicle inventory and forms for appraisal of a vessel and outboard motor inventory, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9645).

These rules are being repealed in order to combine the substance of the two rules into new rule 34 TAC §9.4035. The

new rule will make it easier for the persons affected by these rules to read and interpret them.

No comments were received regarding adoption of the repeals.

These repeals are adopted under the Tax Code, §111.002 and §111.0022 which provide the comptroller with the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeals implement the Tax Code, §§23.121, 23.122, 23.12D, and 23.12E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715008
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: December 1, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 463-3699

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34 TAC §9.4035

The Comptroller of Public Accounts adopts new §9.4035, concerning special types of inventory reporting forms, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9646).

The new section is being adopted to make the rules easier to use, conform to current agency practice, and reflect statutory changes made by House Bill 2116, 75th Legislature, 1997, effective May 26, 1997, and House Bill 2606, Senate Bill 759, and Senate Bill 1153, 75th Legislature, 1997, effective January 1, 1998.

Comments were received from a county appraisal district regarding Step 2 of the special inventory declaration form. The comptroller has changed the special inventory declaration form to allow for only one business for each declaration form.

Another county appraisal district commented on consolidating all the special inventory forms into a single form. The comptroller did not make the suggested change, since the Tax Code requires the comptroller to promulgate a declaration and tax statement for each type of special inventory and each form must contain appropriate and specific information.

This new section is adopted under the Tax Code, §5.07, which requires the comptroller to prescribe the contents and form for the administration of the property tax system.

The new section implements the Tax Code, §§23.121(f), 23.122(e), 23.12D(f), 23.12E(e), 23.1241(f), 23.1242(e), 23.127(f), and 23.128(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715009
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: December 1, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 463-3699

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) adopts an amendment to §3.301, and new subchapter TT, §§3.7301-3.7303, with changes to the proposed text published in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8938).

Justification for the amendment and new sections is to implement a workforce orientation requirement to provide applicants with information and resources that support their work effort.

The amendment and new sections will function by helping clients to understand that Temporary Assistance for Needy Families (TANF) benefits are time-limited and the importance of work and personal responsibility. It will introduce TANF applicants to the available resources of the Texas Workforce Commission (TWC) and prepare the individual for independence before expiration of their state and federal time limits for receiving assistance.

During the 30-calendar-day public comment period, the department received written comments from the Center for Public Policy Priorities, Houston Welfare Rights Organiza- tion, Lifeline Social Services for Pregnant Women, Houston-Galveston Area Council, de Madres a Madres, Inc., Texas Workforce Commission, Christ the Good Shepherd Catholic Community, and two individuals; one telephone comment; and two requests for a public hearing from Texas Clients Council and Texas Association of Community Organizations for Reform Now (ACORN). A public hearing was held on October 10, 1997, in the Public Hearing Room of the John H. Winters Center, 701 West 51st Street, Austin, Texas. At the public hearing, a request to extend the comment period to October 17, 1997, was approved. The following is a summary of the comments received during the written comment period and during the public hearing, and DHS's responses.

Comment 1: One commenter requested the name of the orientation be changed from "Career Opportunity Orientation" to "Workforce Orientation."

Response: The rules are modified to change the name of the orientation from "Career Opportunity Orientation" to "Workforce Orientation."

Comment 2: Six commenters indicated transportation is a critical issue to the workability of this proposal and access to transportation must be addressed.

Response: TWC has designated some zip codes as "too remote" because there is no public transportation, so applicants in these areas will not be required to attend the orientation.

Also, applicants outside these zip codes who meet the definition of "too remote" will not be required to attend the orientation.

An applicant who is too remote will not be required to attend the orientation. The definition of "too remote" is defined as the distance from the applicant's home to the orientation if it requires commuting time of more than one hour one way (not including taking a child to and from a child care facility) or if it prohibits walking and transportation is not available. The rule is modified to include this definition of "too remote."

Additionally, TWC and DHS currently have some offices that are co-located offices. TWC and DHS will continue to assess the feasibility of co-housing or providing the orientations in local DHS offices. This will alleviate the applicant having to go to a TWC office to attend the orientation.

Comment 3: One commenter suggested that applicants should not have to travel more than 30 minutes each way (one hour round trip) to attend a workforce orientation. The commenter also indicated this 30-minute rule should apply in lieu of the "no public transportation" clause noted in the proposed rule. Another commenter indicated the definition of too remote should be defined in the rule.

Response: DHS already has a definition for "too remote" as noted in the response to Comment 2, and will use this definition to determine if an applicant is considered too remote from the place of orientation.

The rule is modified to include this definition of "too remote."

Comment 4: Five commenters indicated child care is a critical issue that needs to be addressed. There are two aspects to the child care issue: 1) obtaining child care while the applicant attends the orientation; and 2) the child care funds available when an applicant obtains employment.

One commenter also requested the proposed rule be changed to state that child care will be provided at no cost to the applicant while attending the orientation, if the applicant has a child 12 years of age or younger in need of child care.

Response: Applicants who are required to attend the orientation are expected to make child care arrangements in the same manner as they make arrangements to go to the local DHS office to apply for TANF benefits. Often, applicants and recipients bring their children to the local office for the application interview. The applicant has the option of taking the child to the orientation.

For these reasons, DHS declines to require child care be provided to allow the applicant to attend the orientation.

In response to the availability of child care funds for an applicant who obtains employment prior to being certified for TANF or within the first three months of certification, TWC has set aside up to $4 million. This fund is separate from the child care funds for JOBS participants. Additionally, TWC is committed to obtaining additional funds if the initial child care funds are depleted.

Comment 5: Two commenters indicated the orientation should be provided at local DHS offices. Additionally, there is legislation that requires the orientation to be held in local DHS offices to the extent possible. One commenter indicated the rule should be modified to indicate where the orientations will be held. One commenter stated the proposed rule contradicts the concept of one-stop service.

Response: As noted in the response to Comment 3, TWC is currently co-located in some local DHS offices. TWC continues to assess the feasibility of co-housing offices. Additionally, TWC has issued a memorandum to local workforce boards, TWC regional coordinators, and TWC regional directors indicating that the scheduling of the orientations should encourage client choice by offering more than one location. The orientations may be held in local DHS offices, TWC offices, workforce centers, libraries, or community centers. TWC also encourages local workforce boards to co-locate with DHS offices or provide the orientation at a local DHS office.

DHS disagrees with the commenter that the rule should be modified to include where the orientations will be held. It is not appropriate for DHS to specify any TWC requirements in the rules.

Comment 6: One commenter requested the rules be modified to specify what funds will be used to provide the orientations. Additionally, the commenter requested clarification as to whether contractors with a local workforce board or TWC staff are required to provide the orientation.

Response: TWC has indicated that TANF funds will be used to provide the orientations. TWC staff or individuals who contract with local workforce boards to provide workforce services are required to provide the orientation to the applicants. DHS disagrees with the commenter that the rules should be modified to specify what funds will be used to provide orientations. It is not appropriate for DHS to specify any TWC requirements in the rules.

Comment 7: One commenter indicated that time limit benefits information should be provided to all applicants by DHS and not during the orientation by workforce staff.

Response: DHS provides time-limited benefits information to all TANF applicants either individually or in group informing sessions. To reinforce the philosophy that TANF benefits are temporary because they are time limited and work is important, workforce staff will also send the same message to applicants attending the orientation session.

Comment 8: One commenter indicated that the definition of the "incapacity" exception required further clarification.

Response: An applicant who claims to be incapacitated or disabled meets the exception criteria and will not be required to attend the orientation. Current TANF procedures to obtain medical verification from a doctor will be used to determine incapacity. Once the application is certified, if it is determined the client is not incapacitated, participation with the JOBS program, unless the client is exempt from participating for another reason, will be required.

The rule is modified to clarify the incapacity exception.

Comment 9: One commenter indicated the requirement to attend the orientation is not specified in Chapter 31 of the Human Resource Code; therefore, it appears that the workforce orientation is a requirement for recipients and not applicants. The commenter indicates the preamble to the proposed rule relates to the TWC JOBS program.

Response: The preamble contained a misleading statement that indicated this requirement is part of the JOBS program. The "Workforce Orientation" is a new eligibility requirement and is not part of the JOBS program. In fact, after the TANF case is certified, and until the client attends the JOBS orientation, a

JOBS case will not be opened. The orientation will inform the applicant that once the TANF benefits are certified, they will be required to participate with the JOBS program unless they are exempt.

Comment 10: One commenter indicated that DHS is still under the 45-day rule to make a determination on applications, and imposing the workforce orientation as a condition of eligibility will undermine DHS's ability to meet this rule.

Response: The policy will be modified to exclude an applicant from the requirement to attend the orientation if there is no orientation scheduled within ten days prior to the 45th day and TWC is not able to provide an individual orientation.

Comment 11: One commenter indicated the adult should be sanctioned for noncompliance with the requirement to attend the workforce orientation instead of denying the household. The commenter indicated this is consistent with other sanctions.

Response: Federal and state welfare reform initiatives emphasize work and personal responsibility and impose time limits on the receipt of cash assistance. Because of these changes, TWC and DHS believe that it is important to send a strong message to applicants for assistance and that this message is more important than consistency with other sanctions. In addition, the agencies are hopeful that some applicants will be better able to make informed choices as a result of the information and assistance provided at the orientation session.

Comment 12: One commenter requested that the proposed rule be reviewed by the Medical Care Advisory Committee and then be presented to and approved by the Board of the Texas Department of Health because the TANF program is a path to Medicaid eligibility.

Response: DHS's policies and procedures will instruct staff to determine eligibility for Medicaid if the applicant has requested Medicaid benefits on the application form and the applicant fails to comply with the orientation requirement. A household that is eligible for TANF but chooses to bypass the program by not complying with an eligibility point is potentially eligible to receive Medicaid under the Medically Needy Program.

Because the applicant can choose to bypass receipt of TANF benefits and still potentially receive Medicaid, DHS disagrees with the commenter that the rule should be taken before the Medical Care Advisory Committee and the Board of the Texas Department of Health.

Comment 13: Three commenters suggested an automated return of the certificate of attendance so the applicant does not have to return the form. Additionally, the commenter requests the rule be modified to add language that specifies staff conducting the workforce orientation are responsible for delivering verification of compliance.

Response: TWC workforce staff and local DHS staff will determine the best way to return the certificate of attendance to DHS without requiring the applicant to return the form. TWC staff will use the following hierarchy to send the certification of attendance: fax; telephone; courier by designated staff; interagency mail; or regular mail in a postage- paid envelope provided to the applicant by DHS.

In some instances applicants will prefer to return the certification to DHS personally. TWC and DHS's procedures will instruct staff to coordinate with local workforce staff to determine the best way to return the certification from workforce staff using the hierarchy provided in the response to Comment 13. Therefore, TWC and DHS believe there are ample methods of returning verification and both agencies agree to continue toward development of an electronic verification system.

The hierarchy will be part of the policy and procedures, and therefore, the rules will not be modified to include this information.

Comment 14: One commenter requested the proposed rule be modified to change the exception criteria for caretakers caring for children under four months of age to a child four years of age.

Response: Unlike the state time limit on benefits, the federal time limit applies to all families with an adult receiving benefits. TWC and DHS feel it is essential to provide information and access to resources available from TWC to as many applicants as possible so they can make informed decisions regarding work and their time-limited benefits. Once the application is certified, a caretaker caring for a child under age four will be exempt from future JOBS participation until the child is age four.

Comment 15: One commenter requests the proposed rule be changed to allow an exception from the workforce orientation requirement if the applicant has earnings that exceed the value of the cash assistance. Also, the commenter requests that an individual who is attending school or training to become self-sufficient be excluded from this requirement.

Response: The rule indicates an applicant will be excluded from the workforce orientation requirement if working 30 hours or more a week and earning at least minimum wage or the equivalent earnings if working less hours. An applicant who is earning less and excluded from this requirement may not be exposed to the information or have access to the resources that are available at TWC.

TWC and DHS appreciate the comment to exclude an individual who is enrolled in school or in training. The rule is modified to allow DHS staff to exclude an individual from attending the orientation if the individual's education or training schedule conflicts with all available orientation sessions.

Comment 16: Three commenters endorse the concept of a workforce orientation as a condition of eligibility for receiving TANF. The commenters believe the proposed rule tracks the intent of HB 1863, the state's comprehensive welfare reform bill. One of the commenters also requests the rule be modified from "living in a Job Opportunities and Basic Skills (JOBS) county" to statewide. This allows local workforce boards to expand to non-JOBS counties in order to reach an adequate number of recipients to meet the required participation rates.

Response: If local workforce boards determine it is feasible to provide JOBS services to non-JOBS counties, coordination will need to occur with TWC and DHS. The expansion of services to non-JOBS counties will result in these counties becoming JOBS counties, therefore, DHS believes there is no need to modify the rule.

Comment 17: One commenter indicated that DHS receives over 1,300 TANF applications per day and the vast majority of these applicants will be required to attend a TWC workforce orientation. The volume of applicants raises serious questions and requires clear answers to issues such as when, how often, and where the sessions will occur. The commenter also stated these issues should be answered with actual numbers of clients

who will have to attend the sessions and a parallel assessment should be made to determine the capacity of the local TWC/ local workforce boards, or career centers to adequately address the situation. The commenter indicates the importance of this level of planning should not be underestimated.

Response: TWC, with the assistance of DHS, has estimated the number of applicants by county to determine how many sessions will be required by each TWC office or local workforce board. Additionally, TWC has developed a planning document that outlines an implementation plan and the contents of the workforce orientation session. This document will be shared with advocacy groups. After the document is finalized, the information will be shared with workforce staff/local workforce boards to ensure they understand the procedures, contents of the workforce orientation session, and operational plans.

Comment 18: One commenter indicated the workforce orientations must be customized to the participants and provide a specific employability plan with the goal being self-sufficiency, not merely non-receipt of TANF benefits.

Response: TWC and DHS agree case plans should be developed for each individual who chooses to take advantage of employment opportunities. In each case, TWC will try to get individual results, but the first step is a group process to get the individual to think about work and identify the barriers of going to work and the benefits available to overcome those barriers. TWC and DHS believe the first step can lead to individual planning. An individualized plan will be followed by those who are interested in pursuing employment options available through TWC.

Comment 19: One commenter stated the rule should be modified to exclude individuals from the workforce orientation if the household has an emergency situation such as a victim of domestic violence.

Response: Staff in DHS's Family Violence Section were consulted and they indicated victims of family violence should be excluded from this requirement if it places the applicant or their children in danger. Otherwise, these individuals should be exposed to as much information regarding employment and resources as possible.

TWC and DHS appreciate the comment. The rule is modified to state that applicants who indicate they are victims of domestic violence and would be in danger if required to comply with this requirement, will be excluded. Any applicant who meets the exception criteria will be informed that they may attend the orientation if they choose, but it will not be a requirement of eligibility.

Comment 20: Two commenters suggested an alternative to the proposed rule in which the workforce orientation would be phased in as local workforce boards are operational. Two commenters suggested the proposed rule should be piloted in an area instead of being implemented statewide.

Response: Unlike the state time limit on benefits, the federal time limit applies to all families with an adult receiving benefits. TWC and DHS feel that it is essential to provide information and access to resources available from TWC to as many applicants as soon as possible. The applicant can then make informed decisions regarding work and their time- limited benefits.

As indicated in the response to Comment 17, TWC has developed a planning document that outlines an implementation plan as well as the contents of the orientation session. The information will be shared with workforce staff/local workforce boards to ensure they understand the procedures, contents of the workforce orientation session, and operational plans. This planning document will provide the local workforce boards and TWC a time line for training and implementation of this requirement.

Comment 21: One commenter indicated DHS's Budget Management determined there is no economic cost. The commenter indicated this statement is incorrect as there is an economic cost to persons who are required to comply with the proposed rule.

Response: As indicated in the response to Comment 2 and Comment 3, DHS has exceptions for clients who are too remote. Also, as indicated in the response to Comment 4, applicants have the option of bringing their children with them to the orientation. There- fore, DHS disagrees with this comment and is not modifying the rule.

Comment 22: One commenter supported the rule indicating the process would give applicants choices and empowerment.

Response: TWC and DHS appreciate the comment.

Comment 23: Two commenters indicated the proposed rule should be mandated for non-exempt clients (recipients who are not exempt from participating with the JOBS program).

Response: The rule introduces a new eligibility requirement and is not related to the JOBS program.

Comment 24: One commenter questioned if DHS's staff have considered the impact the proposed rule will have on the evaluation of the full employment (work subsidy) pilot currently underway in Corpus Christi.

Response: TWC and DHS agree with the commenter's concern and will exclude offices that are involved with the work subsidy pilot from this requirement for the duration of the pilot.

Comment 25: One commenter was provided with TWC handouts with information regarding benefits applicants may be eligible to receive when they go to work. The commenter praised the use of the TWC materials and requested the blanks be filled in on these forms if they were to be given to applicants. The commenter requested the rules be modified to include the information sheet regarding child support and should mention that, "in regard to families no longer receiving cash assistance, each cent of currently owed child support that is collected is forwarded to the family."

Response: The pamphlets were provided to the state by the Southern Institute. The pamphlets explain that benefits such as child support, Medicaid, food stamps, and earned income tax credits are available to working families. TWC will modify these pamphlets and provide them at the orientation. Since the pamphlets contain information regarding several different programs and not just child support information, DHS will not modify the rules.

Comment 26: One commenter indicated that applicants should be informed of the "exemptions" before being required to attend the orientation.

Response: During the interview, the applicant will be informed if they meet the "exception criteria" for the orientation requirement. An applicant who meets the exception criteria will be excluded from the requirement. Applicants will also be informed

of "exemptions" from the JOBS program by DHS staff before the application is certified.

Comment 27: One commenter indicated there should be no quota set for the number of "good cause" exemptions.

Response: There is no quota set on the number of "exceptions" to the workforce orientation requirement.

In addition, the proposed text of §3.301, Responsibilities of Clients and the Texas Department of Human Services (DHS), contained a publication error. On page 8938, §3.301(a), should have read: "To apply, the client must complete the application process. Clients must:" This correction is included in the adoption. New subchapter TT, §3.7303, also contained a publication error. On page 8939, §3.7303. Failure to Comply, should have read: "If a caretaker or second parent who is required to attend a Workforce Orientation as specified in §3.7301(a) of this title (relating to Workforce Orientation Requirements) refuses or fails to comply, then the application or case will be denied. If a client age 16, 17, or 18, certified as a child, and required to attend the Workforce Orientation refuses or fails to comply, then the child will be disqualified from Temporary Assistance for Needy Families (TANF)." This correction is also included in the adoption.

Subchapter C. The Application Process

40 TAC §3.301

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§3.301. Responsibilities of Clients and the Texas Department of Human Services (DHS).

(a) To apply, the client must complete the application process. Clients must:

(1)-(6) (No change).

(7) comply with the requirement to attend a workforce orientation unless the individual meets the exception criteria as specified in §3.7302 of this title (relating to Exceptions to the Workforce Orientation Requirements).

(b)-(d) (No change).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714991
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: Dcember 1, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 438–3765

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Subchapter TT. Workforce Orientation

40 TAC §§3.7301–3.7303

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§3.7301. Workforce Orientation Requirements.

Temporary Assistance for Needy Families (TANF). TANF adults and minor parents, age 16 through 59, living in a Job Opportunities and Basic Skills (JOBS) county, with TANF children, must comply with the requirement to attend a Workforce Orientation presented by the Texas Workforce Commission.

§3.7302. Exceptions to the Workforce Orientation Requirements.

Temporary Assistance for Needy Families (TANF). An individual applying for or receiving TANF is not required to attend a Workforce Orientation presented by the Texas Workforce Commission if the individual:

(1) is too remote from the orientation site. "Too remote" is defined as the distance from the applicant's home to the orientation if it:

(A) requires commuting time of more than one hour one way (not including taking a child to and from a child care facility); or

(B) prohibits walking and transportation is not available;

(2) claims to be incapacitated;

(3) is a child age 16, 17, or 18, and enrolled in school;

(4) is age 60 or older;

(5) is needed in the home to care for an incapacitated child or adult;

(6) is caring for a child under four months of age;

(7) is employed and working 30 hours or more a week at minimum wage or earning the equivalent of 30 hours a week at minimum wage;

(8) has an open Job Opportunities and Basic Skills (JOBS) case;

(9) claims to be a victim of domestic violence and will be in danger if required to comply; or

(10) is attending school or training and their schedule conflicts with all available orientation sessions.

§3.7303. Failure to Comply.

If a caretaker or second parent who is required to attend a Workforce Orientation as specified in §3.7301(a) of this title (relating to Workforce Orientation Requirements) refuses or fails to comply, then the application or case will be denied. If a client age 16, 17, or 18, certified as a child, and required to attend the Workforce Orientation refuses or fails to comply, then the child will be disqualified from Temporary Assistance for Needy Families (TANF).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9714992
Glenn Scott

General Counsel, Legal Services
Texas Department of Human Services
Effective date: December 1, 1997
Proposal publication date: September 5, 1997
For further information, please call: (512) 438–3765

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Chapter 40. Medicaid Managed Care

Subchapter A. Star+Plus

40 TAC §§40.101, 404.103, 40.105

The Texas Department of Human Services (DHS) adopts new §40.103 in its new Medicaid managed care chapter with changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9229). New §40.101 and §40.105 are adopted without changes to the proposed text and will not be republished.

Justification for the new sections is to provide more comprehensive and cost-effective long term care for Medicaid clients in Harris County.

The new sections will function by governing the STAR+PLUS long term care managed care project in Harris County.

The department received a comment from New Avenues of Hope, Inc., requesting clarification of excluded clients. The department has revised the language under §40.103(b)(4) to indicate that the Mental Health and Mental Retardation (MHMR) Home and Community-based Services (HCS) waiver clients and Home and Community based Services-OBRA (HCS-OBRA) waiver clients are excluded from participation in STAR+PLUS. Also, §40.103(b)(6) is revised to state that clients receiving services in residential MHMR facilities are excluded from STAR+PLUS participation. In §40.103(c) the department changed the name from "home and community-based services" to "MHMR HCS waiver services."

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§40.103. Client Participation.

(a) All supplemental security income (SSI) and SSI-related clients and clients who qualify for Medicaid benefits as medical assistance only (MAO) clients must receive their Medicaid services through the STAR+PLUS pilot. Clients will have a choice among at least two Health Maintenance Organizations.

(b) SSI or SSI-related clients who are receiving services from the following programs are excluded from participation in STAR+PLUS:

(1) Frail Elderly waiver;

(2) Community Living Assistance and Support Services (CLASS) waiver;

(3) Deaf Blind Multiple Disabled waiver;

(4) Mental Health/Mental Retardation (MHMR) Home and Community-based Services (HCS) waiver and Home and Community based Services-OBRA (HCS-OBRA) waiver;

(5) Medically Dependent Children Program (MDCP) waiver; and

(6) clients receiving services in residential MHMR facilities.

(c) SSI clients under 21 years of age, SSI clients receiving ongoing rehabilitative services through the local mental health authority, and SSI clients on the waiting list to receive MHMR HCS waiver services will have the option of STAR+PLUS participation or choosing the Primary Care Case Management Program for their acute care services and remaining fee-for-service for their long term care services.

(d) The following clients may enroll in the pilot program, but are not required to do so:

(1) clients who are living in a nursing facility at the time of implementation; and

(2) clients who become Medicaid eligible only after 12 months in a nursing facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 4, 1997.

TRD-9714621
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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Proposal publication date: September 12, 1997
For further information, please call: (512) 438-3765

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 146. Approved Drug and Alcohol Driving Awareness Programs

General Provisions

40 TAC §§146.1–146.9

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§146.1-146.9 concerning general provisions for approved drug and alcohol driving awareness programs, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9648).

These sections define terms used in this chapter and describe the objectives of the chapter, scope of the rules and standards, program certification application and approval process, program certification expiration and renewal process, uniform certificates of course completion, and provisions for denial, revocation, or nonrenewal of certification.

The repeal is adopted because the commission is no longer administering this program.

No comments were received regarding adoption of the repeal.

The repealed sections are adopted under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714645
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: November 25, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 349-6609

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Drug and Alcohol Driving Awareness Program Standards and Procedures

40 TAC §§146.25–146.36

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§146.25-146.36 concerning program standards and procedures for approved drug and alcohol driving awareness programs, without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9649).

These sections describe the program purpose, content, admission criteria, operational requirements, discrimination prohibitions, provisions for participant complaints, and requirements for program administrators, instructors, classroom facilities, recordkeeping and reporting. These sections also state that the commission will maintain a listing of programs and has the right to monitor programs for compliance.

The repeal is adopted because the commission is no longer administering this program.

No comments were received regarding adoption of the repeal.

The repealed sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714646
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: November 25, 1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 349-6609

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Part IV. Texas Commission for the Blind

Chapter 162. Criss Cole Rehabilitation Center

The Texas Commission for the Blind adopts the repeal of §§162.1-162.5, pertaining to the operation of Criss Cole Rehabilitation Center, and simultaneously adopts new §§162.1-162.3 and §§162.10-162.22 without changes to the proposed text as published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9651).

The adoption of the repeals allows the agency to adopt new sections that clarify the types of services offered at Criss Cole Rehabilitation Center, who may be referred to the Center for services, and how a consumer may appeal an action taken by the Commission in the administration of its services at the Center. Subchapter B, §§162.10-162.22, contains the Commission's new rules for conducting investigations of abuse, neglect, and exploitation in a facility operated by a state agency as required by Family Code, Chapter 261 (pertaining to the reporting and investigation of abuse or neglect of a child), and Human Resources Code, Chapter 48 (pertaining to the reporting and investigating of abuse, neglect, or exploitation of a consumer who is elderly or disabled).

No comments were received regarding adoption of the repeals and new sections.

40 TAC §§162.1–162.5

The repeals are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714758
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: December 15,1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 459–2611

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Subchapter A. General Rules

40 TAC §§162.1–162.3

The new sections are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714760
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: December 15,1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 459–2611

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Subchapter B. Investigations of Abuse, Neglect, and Exploitation

40 TAC §§162.10–162.22

The new sections are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714759
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: December 15,1997
Proposal publication date: September 26, 1997
For further information, please call: (512) 459–2611

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Chapter 163. Vocational Rehabilitation Program

The Texas Commission for the Blind adopts the repeal of §§163.4, 163.10, 163.11, 163.17, 163.28, 163.36, and 163.52 of Chapter 163, pertaining to the agency's administration of the vocational rehabilitation program, and simultaneously proposes the adoption of corresponding new sections. The repeals and new sections are adopted without changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9870, et seq.).

The repeals are adopted to allow the agency to adopt new sections because the U.S. Secretary of Education has amended the regulations governing the State Vocational Rehabilitation Services Program to implement changes to the Rehabilitation Act of 1973. The new sections contain revised definitions used in the administration of the vocational rehabilitation program, application procedures, eligibility criteria, the conditions under which a persons case will be closed, a list of services allowed by federal law, the conditions under which a person receives services, including academic services, and the order in which persons will be served in the event the agency needs to implement an order of selection in times of limited funds.

No comments were received regarding adoption of the repeals and new sections.

Subchapter A. General Information

40 TAC §163.4

The repeal is adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714799
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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The new section is adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714803
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Subchapter B. Basic Program Requirements

40 TAC §§163.10, 163.11, 163.17

The repeals are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714800
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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The new sections are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714804
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Subchapter C. Vocational Rehabilitation Services

40 TAC §163.28, §163.36

The repeals are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714801
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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The new sections are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714805
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Subchapter D. Order of Selection for Services

40 TAC §163.52

The repeal is adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714802
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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The new section is adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714806
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Chapter 163. Vocational Rehabilitation Program

The Texas Commission for the Blind adopts amendments to §§163.5, 163.12, 163.13,163.15, 163.16, 163.18, 163.25, 163.26, 163.29, 163.30, 163.31–163.33, 163.34, 163.37–163.39, 163.61, 163.62, and 163.65, pertaining to the agency's vocational rehabilitation program without changes to the proposed text as published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9870).

The amendments are adopted in response to changes in federal regulations. The purpose of the amendments is to reduce possible misunderstandings by consumers and the public about services allowed under the Rehabilitation Act by conforming state language to federal language as much as possible. The amended sections all function as part of the agency's rules for the providing vocational rehabilitation services to eligible individuals.

No comments were received regarding adoption of the amendments.

Subchapter A. General Information

40 TAC §163.5

The amendment is adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714761
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Subchapter B. Basic Program Requirements

40 TAC §§163.12, 163.13, 163.15, 163.16, 163.18

The amendments are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714762
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Subchapter C. Vocational Rehabilitation Services

40 TAC §§163.25, 163.26, 163.29, 163.30, 163.31–163.34, 163.37–163.39

The amendments are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714763
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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Subchapter E. Consumer Participation in Cost of Services

40 TAC §§163.61, 163.62, 163.65

The amendments are adopted under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 3, 1997.

TRD-9714764
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 26,1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 459–2611

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

ADOPTED ACTION

The Commissioner of Insurance has adopted the repeal of Refusal to Renew Mandatory Endorsement HO-100, Refusal to Renew Mandatory Endorsement TDP-026, Refusal to Renew Mandatory Endorsement TDP-027, Refusal to Renew Mandatory Endorsement TFR-086, Refusal to Renew Mandatory Endorsement TFR-087 and Refusal to Renew Mandatory Endorsement FRO-486, as adopted by the previous State Board of Insurance in Board Order Number 60152. The repeal of these mandatory endorsement forms was proposed by department staff in a petition filed September 22, 1997. Notice of the proposal (Reference Number P-0997-29-I) was published in the October 3, 1997, issue of the *Texas Register* (22 TexReg 9901). The repeal of the mandatory endorsement forms was considered at a public hearing November 3, 1997, at 10:00 a.m., under Docket Number 2307, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

The Commissioner has adopted, without changes to the notice of proposed repeal published in the *Texas Register*, the repeal of the mandatory endorsements amending the Refusal to Renew provisions in the Texas Homeowners Policy, Texas Dwelling Policy, Texas Farm and Ranch Policy and Texas Farm and Ranch Owners Policy, which incorporated a prohibition of the refusal to renew a residential property policy because of the condition of the premises unless there was a change in the condition(s) of the premises, the insurer notified the insured of the condition(s), and the insurer provided the insured adequate time to correct the condition.

The repeal results in no change to the Dwelling, Homeowners, Farm and Ranch, or Farm and Ranch Owners Sections of the Personal Lines Manual, because Board Order Number 60152, entered by the State Board of Insurance and dated January 22, 1993, was effectively enjoined prior to the March 1, 1993 effective date of endorsements originally adopted by the board.

On February 26, 1993 a temporary injunction was issued by a Travis County District Court prohibiting the department from implementing or enforcing the endorsements as amended. The district court decision was upheld by the Third Austin Court of Appeals.

The Commissioner has determined that because the department was enjoined by judicial order from implementing, enforcing or otherwise giving any effect to Board Order Number 60152, because the terms of the injunction remain in effect, and because the department does not intend to request or obtain a hearing concerning permanent injunction, the endorsements as originally adopted should be repealed.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.97, 5.101 and 5.96.

The mandatory endorsement forms repealed by the Commissioner in this adoption are on file in the Office of the Chief Clerk of the Texas Department of Insurance under Reference Number P-0997-29-I) and are incorporated by reference by Commissioner's Order Number 97-1126

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act, Government Code, Chapter 2001. Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715029
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 8, 1997
Proposal publication date: October 3, 1997
For further information, please call: (512) 463–6327

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ADOPTED ACTION

ADOPTION OF NEW AND/OR ADJUSTED 1996-97 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance, at a public hearing under Docket Number 2305 held at 10:00 a.m., November 3, 1997 in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe

Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1996-97 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0997-27-I) was published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9701).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the specified model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in an exhibit on file with the Chief Clerk under Reference Number A-0997-27-I, which is incorporated by reference into Commissioner's Order Number 97-1129.

The Commissioner of Insurance has jurisdiction over this manner pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715184
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 20, 1998
Proposal publication date: September 26, 1997
For further information, please call: (512) 463–6327

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Commission on Alcohol and Drug Abuse (TCADA)

Friday, November 14, 1997, 2:00 p.m.

3930 Kirby, Suite 207, Texas Youth Commission

Houston

Regional Advisory Consortium (RAC) Region 6

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; Region 6 revised service plan discussion, old business; new business; announcements and public comment; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349–6669.
Filed: November 5, 1997, 2:46 p.m.

TRD-9714701

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Friday, November 21, 1997, 11:00 a.m.

4707 Montana, Suite 210, Rio Valle Recovery Center, Excel Program

El Paso

Regional Advisory Consortium (RAC) Region 10

AGENDA:

Call to order; welcome and introductions of guests; membership plan; new member nominations; election of officers; behavioral health organization update; old business; new business; public comment; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349–6669.
Filed: November 5, 1997, 2:46 p.m.

TRD-9714702

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The State Bar of Texas

Friday, November 14, 1997, 8:30 a.m.

The Texas Law Center, 1414 Colorado

Austin

The Texas Commission for Lawyer Discipline

AGENDA:

PUBLIC SESSION: Call to order/Introductions/Approve Minutes.

CLOSED SESSION: Discuss appropriate action with respect to pending evidentiary cases; pending and potential litigation; special counsel assignments; and the performance of the General Counsel/ Chief Disciplinary Counsel and staff.

PUBLIC SESSION: Discuss and authorize General Counsel to make, accept or reject offers or take other appropriate action with respect to pending or potential litigation matters/Review and discuss the outcome of recent disciplinary trials/Report of Chief Disciplinary Counsel on those matters unresolved in prior meetings requiring additional information and take appropriate action, if any/ Review, discuss and take appropriate action on: statistical and status reports on pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement; budget and operations of the Commission and the General Counsel's Office; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/Discuss future meetings/ Discuss other matters as appropriately come before the Commission/ Public comment/Adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1–800–204–2222.
Filed: November 6, 1997, 4:02 p.m.

TRD-9714798

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Texas School for the Blind and Visually Impaired

Friday, November 14, 1997, 8:15 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees, Subcommittee on Finance and Audit

AGENDA:

Approve of Minutes:

1. Approval of Minutes from September 26, 1997

Finance Issues:

1. Request to approve a resolution allowing the School to invest in the Lone Star Investment Pool

2. Review Investments Report

3. Review Revenue Reports

4. Review Expenditure Reports

5. Review Contingency Fund Report

6. Review Fiscal Year 1997–1998 Detailed Operating Budget

7. Review Fiscal Year 1997–1998 Detailed Personnel Budget

Audit Items:

1. Report from Internal Auditor

Contact: Marjorie Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: November 6, 1997, 10:27 a.m.

TRD-9714739

♦ ♦ ♦

Friday, November 14, 1997, 9:00 a.m.

1100 West 45th Street, Room 110

Austin

Board of Trustees, Subcommittee on Policies

AGENDA:

1. Review and Discussion of Policies on November 14, 1997 Agenda:

BDAD, BDB, BDE, BED, BQ, BQA, BQB, CDA, CDB, CDCA, CFB, CMD, CPC, CS, CV, CV-E, DAA, DAA-R, DBA, DBB, DEF, DMA, DMAA, DMB, DMBA, DND, EFC, EHBB, EIC, EIE, EIF-E, EKB, EMH, FB, FD, FDA, FK, FMF, FMF-E, FNC, FNCJ, FNG, FNGA, FNH, GBA-E and GRA.

Contact: Marjorie Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: November 6, 1997, 10:27 a.m.

TRD-9714740

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Friday, November 14, 1997, 9:00 a.m.

1100 West 45th Street, Room 151

Austin

Board of Trustees, Subcommittee on Personnel

AGENDA:

1. Personnel Policies:

DAA- Equal Opportunity Employment

DBB- Medical Exams and Communicable Diseases

DEF- Merit Salary Increases

DND- Promotion of Residential Instructors

2. Annual Review of Affirmative Action Plan

3. Review of Progress on Superintendent's Goals

Contact: Marjorie Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: November 6, 1997, 10:26 a.m.

TRD-9714738

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Friday-Saturday, November 14–15, 1997, 10:00 and 9:00 a.m. respectively

1100 West 45th Street, Room 116 (11/14/97) and 1918 American Drive (11/15/97)

Austin, Lago Vista

Board of Trustees

AGENDA:

Approval of Minutes of September 26, 1997 Board Meeting; Approval of Board Policies; Consideration of Approval of 1998 Summer School Calendar; Consideration of Approval of Allowing TSBVI to Invest in the Lone Star Investment Pool; Consideration of Board's Vision and Expectations for the School and for what the Strategic Planning Process will Accomplish.

Contact: Marjorie Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: November 6, 1997, 10:28 a.m.

TRD-9714742

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Interagency Council on Early Childhood Intervention

Wednesday, November 19, 1997, 9:30 a.m.

909 West 45th Street

Austin

Board

AGENDA:

Public Comment. Discussion and Approval of Minutes from the October 15, 1997 meeting. Discussion and approval of Advisory Committee and Director's Forum report. Discussion and approval to adopt amendments to 25 TAC, §621.23 §621.82–84, and §621.126 of the rules for the Interagency Council on Early Childhood Intervention. Update on Review of Financial Disclosures by the Internal Auditor for the ECI Executive Director and Board Members of the Interagency Council on Early Childhood Intervention. Discussion and approval of Audit Plan for Fiscal Year 1998. Discussion and approval of staff recommendation to extend the contract with the Early Childhood Intervention Program at the Austin-Travis County MHMR Center. Discussion and approval of staff recommendation to discontinue to the Fiscal Year 1998 contract with the Early Childhood Intervention Program at the Children's Habilitation Center. Discussion and approval to Schedule Fiscal Year 1998 Meeting Dates for the Board of the Interagency Council on Early Childhood Intervention. Discussion and approval of proposed Merit Raise Plan for Fiscal Year 1998 FYI.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services are requested to contact Linda Hill at least three days prior to the meeting so that arrangements can be made.

Contact: Linda B. Hills, 4900 North Lamar, Austin, Texas (512) 424–6753.

Filed: November 10, 1997, 9:57 a.m.

TRD-9714997

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Texas Commission for the Deaf and Hard of Hearing

Saturday, November 15, 1997, 1:00 p.m.

San Antonio College, 1300 San Pedro Avenue

San Antonio

Board for Evaluation of Interpreters

AGENDA:

Call to Order; Approval of Minutes- July 26 Meeting; Public Comment; Chairperson's Report; Vice Chair Report; Secretary Report; Staff Report; TSID Representative Report; Executive Session; Review Level I Test Materials, Review Intermediary Test Materials, Review Interpreter complaints and Candidate Grievances; Unfinished Business; Candidate Handbook, Test Validation; New Business: Certification, Recertification, Revocation, Reinstatement, Reciprocity; Calendar Update, Conflict of Interest Policy; Announcements; Adjourn.

Contact: Margaret Susman, 4800 North Lamar, #310, Austin, Texas 78756, (512) 451–8494.
Filed: November 6, 1997, 2:47 p.m.

TRD-9714771

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Texas Department of Economic Development

Tuesday, November 18, 1997, 2:00 p.m.

Teacher Retirement System, 1000 Red River, Fifth Floor Board Room

Austin

Governing Board

AGENDA:

2:00 p.m. Call to Order; Overview of Transition and Redevelopment Process; Structure of Review Committee for Retention Contract Initiative; Recess into Executive Session Pursuant to Government Code §551.075 for Conference with Employees to receive information regarding Grant Proposals and Process; Call Back to Order; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936–0158.
Filed: November 10, 1997, 9:12 a.m.

TRD-9714985

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Wednesday, November 19, 1997, 8:30 a.m.

1700 North Congress Avenue, Room 118

Austin

Governing Board

AGENDA:

8:30 a.m. Call to Order; Recess into Executive Session; Call back to order; Approval of the Minutes of the Texas Department of Economic Development Governing Board Meeting of October 3, 1997; Report from Executive Director; Presentation of the Smart Jobs Fund Grants Awarded through October 31, 1997; Review and Possibly Approve for Publication in the Texas Register of Proposed Rules Related to Procedures for the Governing Board; Review and Approval of Resolution Creating Advisory Boards to the Governing Board; Adoption of Proposed Internal Audit Charter; Request #1 for Grant Award of $2.0 million for Reese Center Building Renovation and Sewer Interconnect Project; Request #2 for Reese Center, Equipping and Operating the Institute of Environmental and Human Health; Request #1 for Grant Award of $2.0 million to Greater Kelly Development/City of San Antonio Building #375 Hangar Modernization Project; Request #2 for Grant Award of $2.0 million for Greater Kelly Development Corporation for Construction of an 80,000 square foot telecommunications facility; Request #3 for Grant Award of $2.0 million for Greater Kelly Development Corp/City of San Antonio for the Southside Alternate Potable Water Source; Texas Agritech Corridor Partnership Initiative; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936–0158.
Filed: November 10, 1997, 4:24 p.m.

TRD-9715073

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Wednesday, November 19, 1997, 11:35 a.m.

1700 North Congress Avenue, Room 118

Austin

Texas Economic Development Corporation

AGENDA:

11:35 a.m. Call to Order; Approval of Minutes of Meeting of October 3, 1997; Consider and approve amendment of TEDC Operating Procedures and new resolution regarding authorized representatives of the Corporation; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936–0158.
Filed: November 10, 1997, 4:24 p.m.

TRD-9715074

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Texas Department of Economic Development and Strategic Military Planning Commission

Tuesday, November 18, 1997, 3:20 p.m.

Teacher Retirement System, 1000 Red River, Fifth Floor Board Room

Austin

Governing Board and Commission

AGENDA:

3:20 p.m. Call to Order; Introductions; History of Defense Effort in the Department; Base Reuse Concepts and Challenges; Retention Contract; Defense Perspectives from Washington; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936–0158.
Filed: November 10, 1997, 9:12 a.m.

TRD-9714984

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Advisory Commission on State Emergency Communications

Wednesday, November 19, 1997, 9:15 a.m.

John H. Reagan Building, Room 104, 105 West 15th Street

Austin

Operations and Performance

AGENDA:

The Committee will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take committee Action, as Necessary; ACSEC Financial Report; Update on Agency Staffing Request to the Legislative Budget Board and Governor's Office Pursuant to General Appropriations Act of the 75th Legislative Session; Review and Consider State Auditor's Audits on Councils of Governments and Follow-up Activity with ACSEC; GTE Service Fee Remittance and Collection; Public Education Program Update; Discussion of Public Education Materials; Training Program Update; Approval of July 9 and October 8, 1997 Meeting Minutes. The Committee may meet in Executive Session on any of the items as authorized per the Texas Open Meetings Act and pursuant to Government Code §551.071 and consultation with Staff Attorney on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305–6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305–6933.
Filed: November 7, 1997, 4:18 p.m.

TRD-9714919

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Wednesday, November 19, 1997, 10:45 a.m.

John H. Reagan Building, Room 104, 105 West 15th Street

Austin

Planning and Implementation Committee

AGENDA:

The Committee will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take committee Action, as Necessary: FY 1998 and FY 1999 Strategic Plan Financial Impact and Reallocation of Budget Authority; Panhandle Regional Planning Commission Plan Amendment; North Central Texas Council of Governments Plan Amendment; Review of Rule 251.3, Guidelines for Addressing Funds; Update on Insurance Coverage for 9–1–1 Equipment; Consider Phase I of Wireless Trial; Approval of October 8, 1997 Meeting Minutes. The Committee may meet in Executive Session on any of the items as authorized per the Texas Open Meetings Act and pursuant to Government Code §551.071 and consultation with Staff Attorney on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305–6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305–6933.
Filed: November 7, 1997, 4:18 p.m.

TRD-9714977

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Wednesday, November 19, 1997, 1:15 p.m.

John H. Reagan Building, Room 104, 105 West 15th Street

Austin

Commission Meeting

AGENDA:

The Commission will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Commission Action, as Necessary: Update on Request for Proposal Data Base Operations and Network Systems Configuration; Update on City of Corpus Christi's Proposed Withdrawal from the Coastal Bend Council of Governments' 9–1–1 Regional Plan; Consider Comments Received and Adoption of Proposed Rules 253.1–251.31, Resolution Process and Procedural Rules; Texas Poison Control Center Network services to Other Jurisdictions and Entities; Presentation and Discussion on Cellular Conversion and Compliance Plans and Related Costs; ACSEC Meeting Schedule for FY 1998; Operations and Performance Committee Report; Planning and Implementation Report; Approval of October 9, 1997 Commission Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized pre the Texas Open Meetings Act, and pursuant to Government Code §551.071 and consultation with Staff Attorney on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305–6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305–6933.
Filed: November 7, 1997, 4:18 p.m.

TRD-9714920

♦ ♦ ♦

State Employee Charitable Campaign

Wednesday, November 19, 1997, 4:00 p.m.

Midwestern State University, Hardin Building, 3410 Taft Boulevard

Wichita Falls

Local Employee Committee, Red River Area

AGENDA:

1. Call to order
2. Campaign Update
3. Evaluation of Campaign Practices
4. Next Steps
5. Adjourn

Contact: Juliy Divine, 624 Indiana, Suite 304, Wichita Falls, Texas 76301, (940) 322–8638.
Filed: November 6, 1997, 3:20 p.m.

TRD-9714777

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Texas Board of Professional Engineers

Tuesday, November 18, 1997, 9:00 a.m.

1917 IH35 South, Board Room

Austin

Enforcement Committee

AGENDA:

1. Call to Order

A. Meeting Called to Order by Committee Chair at 9:00 a.m.

B. Roll Call

C. Welcome Visitors

2. Discuss and Possibly Act on Progress of Texas Department of Criminal Justice Investigation.

3. Discuss and Possibly Act on New and Altered Rule Proposals for Item 7b on the Agenda for the Regular Board Meeting of November 19, 1997.

4. Discuss and Possibly Act on Staff Questions Concerning Procedures and Penalties.

5. Discuss and Possibly Act on Corporate Engineering Certifications.

6. Discuss and Possibly Act on Direct Supervision and Consultant Organizational Structure.

7. Discuss and Possibly Act on Correspondence Received.

8. Adjourn.

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440–7723.
Filed: November 7, 1997, 3:03 p.m.

TRD-9714905

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Tuesday, November 18, 1997, Noon

1917 IH35 South, Board Room

Austin

General Issues Committee

AGENDA:

1. Call to Order

A. Meeting Called to Order by Committee Chair at 12:00 Noon.

B. Roll Call

C. Welcome Visitors

2. Discuss and Possibly Act on Issues for the Residential Foundation Committee

3. Discuss and Possibly Act on Communications Received.

A. Position Paper Regarding Amicus Curiae.

B. Issues Regarding Unsolicited Advertisements.

C. Issues Regarding Utility Poles and §20(f) Exemption.

D. Requests to Serve on Committees.

E. Design-Build an Alternative Project Delivery Method.

4. Discuss and Possibly Act on Ad Hoc Committee Issues.

A. Industry and Education Advisory Committees.

B. New Member Training Committee.

C. Architect-Engineer Liaison Committee

5. Discuss and Possibly Act on licensing Committee Recommendations for September 19, 1997 Meeting.

6. Discuss and Possibly Act on New and Altered Rule Proposals for Item 7b on the Agenda for the Regular Board Meeting on November 19, 1997.

7. Discuss and Possibly Act on Truss Policy.

8. Adjourn.

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440–7723.
Filed: November 7, 1997, 3:03 p.m.

TRD-9714906

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Tuesday, November 18, 1997, 2:00 p.m.

1917 IH35 South, Board Room

Austin

Licensing Committee

AGENDA:

1. Call to Order

A. Meeting Called to Order by Committee Chair at 2:00 p.m.

B. Roll Call

C. Welcome Visitors

2. Discuss and Possibly Act on Issues Concerning New Branches of Engineering

3. Discuss and Possibly Act on NCEES Matters

A. Contracts for Emeritus Members.

B. Nominations for National Awards.

4. Discuss and Possibly Act on Corporate Engineering Certifications.

5. Conduct and Possibly Act on Personal Interviews.

A. Thomas Dean Burton

B. James Philip Casey

C. Donald Wayne Goodwin

D. Robert Herman Hallerman.

E. Gary Alan Julian

F. Kourosh John Khalilian

G. Vasile Gratian Marincasiu

H. Simon G. Solorio, Jr.

6. Discuss and Possibly Act on New and Altered Rule Proposals for Item 7b on the Agenda for the Regular Board Meeting of November 19, 1997.

7. Adjourn.

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440–7723.
Filed: November 7, 1997, 3:03 p.m.

TRD-9714907

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Wednesday, November 19, 1997, 8:30 a.m.

1917 IH35 South, Board Room

Austin

AGENDA:

Call to Order; roll call; recognize visitors; discuss and approve of minutes of June 17, 18, August 4, September 19, and October 24, 1997 Board and Committee meetings; receive member activity reports; discuss and possibly act on: directors reports on financial matters, applications, examinations; staff members' activity reports; disciplinary matters including administrative report, status of court cases and individual disciplinary matters; cease and desist orders, and injunction/default judgements; press releases and correspondence on presentation of award; personal interviews by various applicants; old business including future meetings, committee reports on licensing, enforcement and general issues, reports on EMCEES annual meeting, ABET visits, and CPC; new business including a special presentation, proposed new or altered board Rules 131.1–13.3, 131.7–131.10, 131.12, 131.14, 131.15, 131.17–131.19, 131.52–131.55, 131.71, 131.81, 131.91, 131.101–131.104, 131.113, 131.131, 131.134–131.136, 131.151, 131.152, 131.162, 131.163 and 13.166–131.168, updated exam policies, NCEES matters, recognition of non-accredited engineering programs; adjourn.

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440–7723.
Filed: November 7, 1997, 4:17 p.m.

TRD-9714918

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Texas Funeral Service Commission

Monday-Tuesday, November 17–18, 1997, 10:30 a.m. and 9:00 a.m. respectively

510 South Congress, Suite 206

Austin

Complaint Review Committee

AGENDA:

The agenda for Monday's meeting is as follows: I. Convene, Leo Metcalf, Chair. II. Public Comment. III. Discussion and Possible Action concerning the following complaints: 1. TFSC Case Number 96–132; 2. TFSC Case Numbers 97–108/96–148/96–196; 3. TFSC Case Number 97–116; 4. TFSC Case Number 97–037; 5. TFSC Case Numbers 97–055/97–095; 6. TFSC Case Number 97–113; 7. TFSC Case Number 97–118; 8. TFSC Case Number 97–124; 9. TFSC Case Number 97–133; 10. TFSC Case Number 97–142; 11. TFSC Case Number 97–145; 12. TFSC Case Number 97–150; 13. TFSC Case Number 97–155; 14. TFSC Case Number 97–158; 15. TFSC Case Number 98–005; 16. TFSC Case Number 98–034; 17. TFSC Case Number 98–035. 18. In the matter of Dorcus Mae Johnson. IV. Informal conference concerning the following cases: 1. TFSC Case Number 95–094; 2.TFSC Case Number 96–151; 3. TFSC Case Number 96–069; 4. TFSC Case Number 96–150; 5. TFSC Case Number 96–230; 6. TFSC Case Numbers 96–192A/96–192B. V. Recess.

The Agenda for Tuesday's meeting is as follows: I. Re-convene, Leo Metcalf, Chair. II. Informal conference concerning the following cases: 1. TFSC Case Number 95–096; 2.TFSC Case Number 95–130; 3. TFSC Case Number 96–065; 4. TFSC Case Number 96–119; 5. TFSC Case Number 96–100; 6. TFSC Case Number 96–082; 7. TFSC Case Number 97–006; 8. TFSC Case Number 97–080; 9. TFSC Case Number 97–105. III Adjourn

Contact: Eliza May, 510 South Congress Avenue, Suite 206, Austin, Texas 78704–1716.
Filed: November 7, 1997, 4:01 p.m.

TRD-9714916

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Texas Growth Fund

Tuesday, November 18, 1997, 10:30 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1. Review and approve minutes of the Special Meeting of the Board of Trustees held on August 11, 1997.

2. Review and approve minutes of the Emergency Meeting of the Board of Trustees held on November 4, 1997.

3. Receive nominations for and elect a Treasurer.

4. Review and approve Resolution designating signatories on Texas Commerce Bank checking accounts.

5. Review and approve request to replenish balances in checking accounts for routine expenses.

6. Review and approve proposal from Ernst and Young LLP to perform audits of 1997 year-end financial statements.

7. Review and approve invoice from Vinson and Elkins LLP.

8. Review and approve proposal from Nieman Hanks Puryear Partners to renew insurance policy.

9. Review and approve amendments to the Declarations of Trust.

10. Review and approve TGF Management Corp's 1998 Budget Request.

11. Review and approve proposed investments(s).

12. Such other matters as may come before the Board of Trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322–3100.
Filed: November 10, 1997, 4:25 p.m.

TRD-9715075

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Texas Department of Health

Tuesday, November 18, 1997, 9:00 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

Birthing Center Ad Hoc Rules Committee

AGENDA:

The committee will introduce members and guests, and will discuss and possibly act on: approval of the minutes of the February 7, 1997, meeting; public comments received on proposed birthing center licensing rules (25 Texas Administrative Code (TAC), Chapter 137) published in the July 22, 1997 issue of the *Texas Register* (22 TexReg 6821); draft final rules (25 TAC, Chapter 137) for recommendation

to the Texas Board of Health; and public comments (may be limited to three minutes per comment).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6646.
Filed: November 7, 1997, 9:07 a.m.

TRD-9714829

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Wednesday, November 19, 1997, 6:00 p.m.

Ma Ferguson's Restaurant, 6000 Middle Fiskville Road

Austin

Texas Board of Health Strategic Planning Meeting

AGENDA:

The Texas Board of Health will discuss and possibly act on: review of the October 10, 1997, Planning Retreat; and clarification of the Board's role, involvement, expectations, and support for the long term strategic planning process.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Kris Lloyd, (512) 458–7484 or Rick Danko, (512) 458–7261, 1100 West 49th Street, Austin, Texas 78756 .
Filed: November 10, 1997, 4:06 p.m.

TRD-9715067

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Thursday, November 20, 1997, 8:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health Strategic Planning Meeting

AGENDA:

The Texas Board of Health will discuss and possibly act on: information items (presentation on Texas expenditures on essential public health functions (1995 baseline); and public health infrastructure (presentation on managed public health in Region 8)); and process planning (examine agency philosophy, vision, and mission).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Kris Lloyd, (512) 458–7484, or Rick Danko, (512) 458–7261,1100 West 49th Street, Austin, Texas 78756.
Filed: November 10, 1997, 4:06 p.m.

TRD-9715068

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Friday, November 21, 1997, 9:30 a.m.

Moreton Building, Room M-618, Texas Department of Health, 1100 West 49th Street

Austin

Midwifery Board, Education/Documentation Rules Committee

AGENDA:

The committee will discuss and possibly act on: education rules (25 Texas Administrative Code (TAC), Chapter 37 (review draft of proposed rules; make corrections/changes to the draft; recommendation for forwarding education rules to Midwifery board or continue with editing of rules); and documentation rules (25 TAC, Chapter 37) (review draft of proposed rules; make corrections/changes to the draft; recommendation for forwarding documentation rules to Midwifery Board or continue with editing of rules).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Belva Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7111, extension 2067.
Filed: November 7, 1997, 8:56 a.m.

TRD-9714824

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Friday, December 5, 1997, 9:00 a.m.

Joe C. Thompson Conference Center, Room 2.110

The University of Texas Campus, 2405 East Campus Drive, (26th and Red River)

Austin

End State Renal Disease (ESRD) Facility Task Force Staffing Subcommittee

AGENDA:

The task force will introduce members and guests, and discuss and possibly act on: a review of the ESRD facilities licensing rules (25 Texas Administrative Code, Chapter 117) relating to staffing, state certification/registry for dialysis technicians, and licensed vocational nurse charge function beyond 1999; setting of the date for the next subcommittee meeting; and public comment (may be limited to three minutes per comment).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6646).
Filed: November 5, 1997, 3:22 p.m.

TRD-9714707

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Friday, December 5, 1997, 10:00 a.m.

Tower Building, Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Children with Special Health Care Needs Advisory Committee

AGENDA:

Following a welcome and introductions, the committee will discuss and possibly act on: approval of the minutes of the September 5, 1997 meeting; determination of the serving terms of new members; updates on (the Texas Healthy Kids (THK) program; and the Children's Health Insurance Program (CHIP)); proposed Texas Health Steps Comprehensive Care Program private duty nursing rules (25 Texas

Administrative Code §§33.601–33.609); presentation on research findings on very low birthweight infants; and introduction and welcome to members of the Center for Disease Control Grant Advisory Committee. At 12:00 p.m., the committee will have a working lunch and will discuss and possibly act on: update on the Center for Disease Control Grant implementation activities. At 2:15 p.m., the committee will continue the meeting and will discuss and possibly act on: South Texas Center to study children with special health care needs; update on the Department of Human Services' managed care pilot STAR PLUS activities in the Harris County service area; announcements; public comments; and determination of future agenda items.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Paula Russell, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7700, extension 3046.
Filed: November 10, 1997, 12:00 p.m.

TRD-9715039

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Texas Health Care Information Council

Thursday, November 20, 1997, 10:00 a.m.

Joe C. Thompson Center, 26th and Red River

Austin

HMO Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's HMO Technical Advisory Committee will convene in open session, deliberate, and possibly take formal action on the following items: Recommendations concerning definition of a service area; recommendation concerning the populations to designate for HEDIS reporting by HMO's; recommendations concerning the definition of commercial products for HEDIS reporting by HMO's; and update on requests for exemptions from HEDIS reporting by HMO's.

Contact: Jim Loyd, 4900 North Lamar, OOL-3407, Austin, Texas 78751, (512) 424–6490, fax: (512) 424–6491.
Filed: November 10, 1997, 10:50 a.m.

TRD-9715003

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Texas Health Insurance Risk Pool ("Health Pool")

Friday, November 14, 1997, (See times as follows).

333 Guadalupe Street

Austin

Board and Actuarial/Rating, Benefits, Audit, and Staffing Subcommittees

Actuarial/Rating, Benefits — 8:00 a.m.,Lobby, Room 100; Audit — 11:00 a.m., Lobby Room 100; Staffing — 11:30 a.m., Hobby 1, Room 1350G; Board — 1:00 p.m. — Lobby, Room 100.

AGENDA:

I. Executive Session: Subcommittees of the Board may meet in Executive Sessions in accordance with Texas Open Meetings Act to discuss personnel matters or to consult with counsel.

II. Subcommittees: 1. Actuarial/Rating: Calculation of standard rate in individual health market; report from actuary re pricing of benefits; discussion, possible finalization of benefit proposal(s), policy language, rate areas, age/sex factors, other rate criteria; draft application for Health Pool coverage; conditions of eligibility for coverage, including those triggering automatic eligibility; possible recommendations to Board regarding these matters; other administrative matters. May meet jointly with Benefits subcommittee.

2. Benefits: Same agenda as Actuarial/Rating subcommittee. The two subcommittees may meet jointly.

3. Staffing: Consideration of, and possible recommendations to the Board regarding, a Third Party Administrator ("TPA") for Health Pool; other administrative matters.

4. Audit: Budget matters; other administrative matters; possible recommendations to Board.

III. Board: Reports, possible recommendations from subcommittees and discussion re same. Discussion regarding and possible selection/approval of: TPA for Health Pool; benefit plans and policy language; conditions of eligibility for coverage, including those triggering automatic eligibility. Possible discussion and action regarding standard rate in individual health market; application for Health Pool coverage; pricing of benefits report from actuary, rate areas, age/sex factors, other rate criteria; compensating agents for referring applicants for coverage; budget matters. Future meetings and timelines; other administrative matters.

Contact: Rhonda Myron, 333 Guadalupe Street, Austin, Texas 78701. (512) 463–6651.
Filed: November 6, 1997, 4:05 p.m.

TRD-9714810

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Texas Healthy Kids Corporation

Thursday, November 13, 1997, 9:30 a.m.

333 Guadalupe Street, Lobby Room 102

Austin

Board of Directors

AGENDA:

1. Welcome and Introductions

2. Swearing-In/Oath of Office

3. Presentation by Texas Department of Insurance Staff; Acting Executive Director,

Summary of provisions of House Bill 3, overview of implementation status

Summary of Texas Open Meetings Act, travel and expense allowances, other applicable statutory provisions

4. Organization/Election of Presiding Officers

Timelines/Future Meetings

Plan of Operation

Bylaws

Formation of Committees

Procedures/Policies, and any related pertinent information

Contact: Tyrette Hamilton, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–3046.
Filed: November 5, 1997, 1:56 p.m.

TRD-9714699

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State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Saturday, December 6, 1997, 9:00 a.m.

Tower 2, Room 2–225, William P. Hobby Building, 333 Guadalupe Street

Austin

AGENDA:

The committee chairperson will take roll and introduce guests, and the committee will discuss and possibly act on: approval of the minutes of the October 25, 1997, meeting; review of the comments received concerning proposed rule (22 Texas Administrative Code (TAC) §141.16(g) published in the September 26, 1997, issue of the *Texas Register* (22 TexReg 9589); and approve this proposed rule for final adoption recommendation to the Texas Board of Health.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6784.
Filed: November 10, 1997, 9:05 a.m.

TRD-9714981

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Texas Higher Education Coordinating Board

Thursday, November 20, 1997, 2:00 p.m.

Chevy Chase Office Complex, Building One, Room 1.100B, 7700 Chevy Chase Drive

Austin

Advisory Committee on Core Curriculum

AGENDA:

Introductions; Election of Co-Chairs; Legislative Background and Committee Charge (Commissioner Brown); Discussion of timelines and how the committee will go about its' work; and Work and Study sessions, to include discussion of models for core curricula, previous core curriculum work done in Texas, types of institutions and students served, etc.

Contact: Julie Leidig, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483–6250.
Filed: November 12, 1997, 11:41 a.m.

TRD-9715183

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Texas State Affordable Housing Corporation

Monday, November 17, 1997, 11:30 a.m.

Convention Center, 500 Rio Concho Drive

San Angelo

Board

AGENDA:

The Board of Texas State Affordable Housing Corporation will meet to consider and possibly act on: Minutes of Meeting of October 20, 1997; Approval of Officers of the Corporation; Signature Authority; Master Servicing Agreement, Compliance Agreement, Sub-Servicing Agreement and the Sub-Compliance Agreement between the Texas Department of Housing and Community Affairs and Corporation for Program 53; Approval of loans under the multifamily rural, underserved and small community pilot program for Lifestyle Housing, Inc. and 83 Westgate Limited; Additional Interior Renovations in Town Oaks Apartments; Executive Session — Personnel Matters; Consultation with attorney under §551.071(2) of Texas Government Code; Anticipated Litigation (potential or threatened); Action in Open Session on Items Discussed in Executive Session: Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475–3100, or Relay Texas at 1–800–735–2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475–3934.
Filed: November 7, 1997, 2:34 p.m.

TRD-9714897

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Texas Department of Housing and Community Affairs

Sunday, November 16, 1997, 5:00 p.m.

441 Rio Concho Drive

San Angelo

Low Income Housing Tax Credit Committee

AGENDA:

The Low Income Housing Tax Credit Committee of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of Meeting of September 13, 1997; Draft Qualified Allocation Plan and rules for the Low Income Housing Tax Credit Program for 1998 for Publication in the Texas Register to Receive Public Comments; Additions and Rearrangement of 1997 Tax Credit Waiting List; Issuance of Determination Notices for Tax Exempt/Tax Credit Waiting List; Adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475–3100, or Relay Texas at 1–800–735–2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475–3934.
Filed: November 7, 1997, 2:34 p.m.

TRD-9714895

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Monday, November 17, 1997, 9:30 p.m.

Convention Center, 500 Rio Concho Drive

San Angelo

Finance Committee

AGENDA:

The Finance Committee of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of Meeting of October 20, 1997; Fourth Quarter Investment Report; Public Funds Investment Act; Proposed Multifamily Mortgage Revenue Bonds in Amount not to Exceed $14,200,000 for Meadow Ridge Apartments; Qualified 501(c)(3) multifamily mortgage revenue bonds for Non-Profit Housing Corporation of Greater Houston; Resolution Relating to the Single Family Mortgage Revenue Bonds in Amount not to Exceed $14,200,000 for Meadow Ridge Apartments; Qualified 501(c)(3) multifamily mortgage revenue bonds for Non-Profit Housing Corporation of Greater Houston; Resolution Relating to the Single Family Mortgage Revenue Bonds 1997 Series D and E, Taxable Single Family Mortgage Revenue Bonds 1997 Series F; Resolution Pertaining to Rules for the Single Family Lending Division Special Loan Programs Utilizing Tax-Exempt and Taxable Bond Proceeds; Adjourn. Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson at (5122) 475–3100 or 1–800–735–2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475–3100, or Relay Texas at 1–800–735–2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475–3934.
Filed: November 7, 1997, 2:34 p.m.

TRD-9714896

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Monday, November 20, 1997, 10:00 a.m.

Convention Center, 500 Rio Concho Drive

San Angelo

Board Meeting

AGENDA:

The Finance Committee of the board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of Meeting of October 20, 1997; Fourth Quarter Investment Report; Public Funds Investment Act; Proposed Multifamily Mortgge Revenue Bonds in Amount not to Exceed $14,200,000 for Meadow Ridge Apartments; Proposed 501(c)(3) Multifamily Revenue Bonds not to exceed $10,000,000 for Non-Profit Housing Corporation of Greater Houston; Resolution Relating to the Single Family Mortgage Revenue Bonds, 1997 Series D, E and F; Single Family Lending Division Special Loan Programs; Biennial Operating Plan for 1998–1999 for Department of Information Resources; HOME/LIHTC award to Westwind Village Partners and San Augustine Seniors Partnership; Increase in HOME Contract for Caprock Community Action for $16,000; Neighborhood Partnership Programs to Covenant Communities; Draft Qualified Allocation Plan and Rules for Low Income Housing Tax Credit Program for 1998 for Publication in the Texas Register to Receive Public Comments; Executive Session for Personnel Matters; Anticipated Litigation (Potential or Threatened) Personnel Matters regarding duties and responsibilities in relationship to Budget under §551.074 Texas Government Code; Consultation with Attorney; Action in Open Session on items discussed in Executive Session. Adjourn.

Contact: Larry Paul Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475–3934.
Filed: November 7, 1997, 2:44 p.m.

TRD-9714902

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Texas Commission on Human Rights

Friday, November 21, 1997, 9:00 a.m.

Texas Commission on Human Rights' Offices, 6330 Highway 290 East, Third Floor Conference Room

Austin

AGENDA:

Executive Session/Commissioner Panels Pursuant Texas Government Code §551.071; Item(s) Covered in Executive Session; Welcoming of Guests; Minutes; Administrative Reports; Senate Oversight Committee during Interim Period between Legislative Sessions; Schedule for Commission's Participation in the Sunset Advisory Review Process; Rules and Procedures for Commission Business Travel as Required by the GSC; Task Force Advisory Meeting of October 8, 1997 Concerning Commission Issues; Possible Commission Participation in ADR Training; Executive Director's Management Plan for FY1998; EEO Training for New State Employees Orientation Pursuant to Article IX, §123; Procedural Rules for Initiating Complaints under the TFHA; Fair Housing Affirmative Marketing Plan; Appointments to the Commission; Evaluations of the Commission's Annual EEO Law Conference; Draft Commission Annual Report for FY 1997; Fiscal 1998 HUD Contract; EEO Riders; Hate Crimes Conference; EEO Compliance Training; Commissioner Correspondence; Commissioner Issues; Unfinished Business. All Items on the Agenda May Be Subject to a Vote, if Appropriate.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas (512) 437–3450.
Filed: November 10, 1997, 3:20 p.m.

TRD-9715059

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Texas Department of Human Services (TDHS)

Tuesday, November 18, 1997, 9:00 a.m.

1100 West 49th Street, Robert D. Moreton Building, Room M653

Austin

Nursing Facility Administrators Advisory Committee

AGENDA:

1. Review of minutes from October 29, 1997, meeting. 2. Adoption of Committee Operation Procedures. 3. Schedule for Implementation of Senate Bill 84 Related Policy. 4. Review of Complaints Against Nursing Facility Administrators.

Contact: Jerry Walker, P.O. Box 149030, Austin, Texas (512) 834–6681.
Filed: November 7, 1997, 4:37 p.m.

TRD-9714932

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Texas Incentive and Productivity Commission

Friday, November 21, 1997, 10:00 a.m.

Committee Room Five, Fifth Floor, Clements Building, 15th and Lavaca Streets

Austin

Commission Open Meeting

REVISED AGENDA:

III. Consideration of and Possible Action to Approve Employee Suggestions Submitted to the State Employee Incentive Program

Texas Department of Public Safety — 405–0256; Corbin Bowles

Texas Workers' Compensation Commission — 453–0060; Linda F. Pleasant

Texas Department of Health — 501–0301; Druanne Mills

Note additional revisions as shown above. Please refer to complete revised agenda, filed with the Secretary of State's Office.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475–2393.
Filed: November 10, 1997, 4:06 p.m.

TRD-9715065

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Texas Department of Insurance

Tuesday, December 2, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1888.C. To consider the application of MARGARETH R. SOHN, Missouri City, Texas, for a Credit Life and Disability Insurance Agent's License to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: November 12, 1997, 12:00 p.m.

TRD-9715185

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General Land Office

Tuesday, November 18, 1997, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; Open and Closed Session — opening and consideration of bids received for the November 18, 1997 sealed bid land sale; pooling applications, El Anzuelo Field, Kenedy Co.; Giddings Austin Chalk-3 Field, Milam and Roberston Counties; Wildcat Field, Lavaca Co.; Giddings (Austin Chalk, Gas) Field, Brazos and Grimes Cos.; Redfish Bay-Mustang Island (Common 10) Field, Nueces Co.; consideration of tracts, terms and conditions for a January 6, 1997 special oil and gas least sale; direct land sale, File SF 12369, Freestone Co.; coastal public lands, structure registration application, Carancahua Bay, Calhoun Co.; commercial easement applications, amendments and renewals, Laguna Madre, Cameron Co.; Mustang Island, Nueces Co.; Neches River, Jefferson Co.; lease application, Corpus Christi Bay, Nueces Co.; easement renewals and applications, Carancahua Bay, Calhoun Co.; Copano Bay, Aransas Co.; Corpus Christi Bay, Nueces Co.; Laguna Madre, Cameron Co.; Clear Lake, Galveston Co.; Cayo Del Grullo, Kleberg Co.; structure cabin permit amendments, renewals, requests and terminations, Carancahua Bay, Calhoun Co.; Laguna Madre, Kenedy Co.; Laguna Madre, Cameron Co.; Espiritu Santo Bay, Calhoun Co.; Laguna Madre, Kleberg Co.; consideration of waiver of statutory first option to purchase Texas Department of Criminal Justice land, Freestone, Anderson, Houston, Brazoria and Walker Cos.; Closed Session and Open Session — consideration of audit compromise and settlement agreement between the State of Texas and Conoco, Inc. and associated waiver of penalties and interest; Closed Session and Open Session — status report, evaluation and analysis by the General Land Office's legal counsel regarding: (i) potential litigation of royalty under payment claims against TransTexas Gas Corporation and its successor lessees; and (ii) the ongoing settlement discussion regarding such claims; Closed session and Open Session- consideration of proposed settlement agreement with certain defendants, Cause 97–12328, State v. Langdon et al; Closed and Open Session — consideration of settlement agreement with certain defendants, Cause 478686, State v. Jean O. Smith and A.J. Vogel; Closed Session — pending or contemplated litigation, or settlement offers.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463–5016.
Filed: November 10, 1997, 4:06 p.m.

TRD-9715070

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Wednesday, November 19, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; Resolution of the Veterans' Land Board of the State of Texas authorizing the issuance and sale of State of Texas Veterans' Housing Assistance Program, Fund II Series 1997–B-2 Bonds in the aggregate principal amount not to exceed $25,000,000. and providing for other matters related to the subject; approval of amendment to Standby Bond Purchase Agreement dated as of April 1, 1997, between the Veterans' Land Board of the State of Texas and Morgan Guaranty Trust Company of New York; Resolution ratifying optional redemptions of December 1, 1997; Quarterly Investment Report for the period ending September 30, 1997; Consideration of adoption of emergency rules for design-build-operate contracts for State Veterans Homes; Consideration of State Veterans Homes Request for Proposal(s) for design-build-operate contract(s); staff reports.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463–5016.
Filed: November 10, 1997, 4:06 p.m.

TRD-9715069

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Board of Law Examiners

Thursday, November 20, 1997, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Panel Hearings

AGENDA:

The hearings panel will hold public hearings and conduct deliberations, including the consideration of proposed agreed orders, on the character and fitness of the following applicants, declarants and/or probationary; Kerry D. Lee; Shaun M. McCowen; James C. Jordan; Altaf Adam; Jong Kim; William P. Lawrence, II; Eric R. Birge; Elizabeth Watkins; (character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code).

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711–3486, (512) 463–1621.
Filed: November 7, 1997, 3:28 p.m.

TRD-9714910

♦ ♦ ♦

Friday-Saturday, November 21– 22, 1997, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

AGENDA:

The Board will call to order and consider: requests for excused absences; approval of minutes, financial and investment reports; review and consider private audit; review bar examination questions for February 1998 examination (in executive session pursuant to §82.003(c), Texas Government Code) consider to implement a formal evaluation of each Texas Bar Examination; consider on whether to allow Examinees to take the bar exam by using their lap up computers consider whether to adopt policy regarding the Short Form Exam passing score; consider request to increase the fee for grading the Short Form Exam; consider appointments to standing committees; reports from staff and board members; matters affecting the FY 1998 budget; whether to recommend that the Supreme court amend Rule II, Rules Governing Admission to the Bar of Texas to eliminate the provisions that require an applicant to hold one out of a specific list of citizenship/INS statuses as a prerequisite to licencure; special requests for waivers and interpretations; Hear and act on the Board's processes with applicants requesting testing accommodations under the ADA; consider whether to amend the Declaration of Intention to Study Law and all forms of the Application for admission to the Bar to include instructive language following the mental health question; changes in the informal and formal review process; consider to adopt procedures regarding the filing of motions for continuance of character and fitness hearings; consider on whether to change board's meeting schedule; consult with legal counsel concerning pending litigation (in executive session); and hear communications from the public.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711–3486, (512) 463–1621.
Filed: November 10, 1997, 9:04 a.m.

TRD-9714978

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Friday-Saturday, November 21– 22, 1997, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

REVISED AGENDA:

Consider Report of Supreme Court Liaison.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711–3486, (512) 463–1621.
Filed: November 12, 1997, 10:43 a.m.

TRD-9715178

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Board for Lease of University Lands

Wednesday, November 19, 1997, 10:00 a.m.

University of Texas System, Board of Regents Meeting Room, 201 West Seventh Street, Ninth Floor

Austin

AGENDA:

1. Approval of tracts offered for Regular Oil and Gas Lease Sale Number 92.

2. Election of Vice Chairman, Board for Lease of University Lands.

3. Appointment of Secretary, Board for Lease of University Lands

4. Approval of the Minutes of the May 13, 1997 meeting of the Board for Lease of University Lands.

5. Lease awards to highest bidders for Regular Oil and Gas Lease Sale Number 92.

6. Lease procedures and terms for Regular Oil and Gas Lease Sale Number 93.

7. Lease procedures and terms for Frontier Oil and Gas Lease Sale Number 93–A.

8. Protection of the surface with regard to particular tracts.

9. Oil royalty take in-kind program.

10. Gas royalty take in-kind program.

11. Rules of the Board for Lease of University Lands and related matters.

12. Pooled Units.

13. Reporting Forms.

14. Executive session pursuant to authority granted under §551.071 of the Texas Open Meetings Act regarding pending or contemplated litigation

• Cause Number 95–08680 in the District Court of Travis County, Texas 345th Judicial District

• Contemplated action related to lease termination

• Contemplated action relating to contract claims

• Contemplated action relating to payment of royalties.

15. Actions, if any, relating to lease termination due to cessation of production, royalty collections, and enforcement of contract obligations.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services may contact Loretta Loyd at (512) 499–4462 at least two work days prior to the meeting date so that appropriate arrangements can be made.

Contact: Pamela S. Bacon, 201 West Seventh Street, Austin, Texas 78701, (512) 499–4462.
Filed: November 10, 1997, 4:06 p.m.

TRD-9715066

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Texas Department of Licensing and Regulation

Wednesday, November 19, 1997, 9:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room 420

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: Park Terrace One Apartments; Parkland Memorial Hospital; Pasadena Downs; Pebble Hills Regional Command; Pilgrim Cleaners; and Plaza Apartments for for failing to pay boiler inspection/certification fee(s) to obtain certificates of operation for the Respondent's boiler(s), in violation of Texas Health and Safety Code Ann. (the Code) Ch. 755 and 16 Tex. Admin. Code (TAC) Ch. 65, pursuant to the Code and Tex. Rev. Civ. Stat. Ann. Art. 9100; Tex. Gov't. Code, Ch. 2001 (APA); and 16 TAC Ch. 65.

Contact: Allyson Lednicky, 920 Colorado, E.O.Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: November 10, 1997, 3:13 p.m.

TRD-9715057

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Wednesday, November 19, 1997, 1:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room 420

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: PPM Investment Castings; Polks Cleaners; Ponderosa Apartments; Powell Cleaners; Primera Baptist Church; Radisson Hotel; and Ramada Inn (Kerrville)i for failure to pay boiler inspection/certification fee(s) to obtain certificates of operation for the above respondent's boiler(s), in violation of Texas Health and Safety Code Ann. (the Code) Ch. 755 and 16 Tex. Admin. Code (TAC) Ch. 65, pursuant to the Code and Tex. Rev. Civ. Stat. Ann. Art. 9100; Tex. Gov't. Code, Ch. 2001 (APA); and 16 TAC Ch. 65.

Contact: Allyson Lednicky, 920 Colorado, E.O.Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: November 10, 1997, 3:13 p.m.

TRD-9715058

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Thursday, November 20, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor Room 108

Austin

Consumer Enforcement Division, Career Counseling

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearings to consider the possible assessment of administrative penalties against the following Respondents, James Caldwell, President, Bernard Haldane Associates, for violations of the Tex. Rev. Civ. Stat. Ann. Art. 5221a-8 (the Act) §§3(a), 5(a), 7, and 3(c), and 16 Tex. Admin. Code (TAC) §62.40, pursuant to the Act, the Tex. Rev. Civ. Stat. Ann. Art. 9100, the Tex. Gov't. Code Ch. 2001 (APA), and 16 TAC Chs. 60 and 62.

Contact: Allyson Lednicky, 920 Colorado, E.O.Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: November 10, 1997, 4:25 p.m.

TRD-9715076

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Thursday, November 20, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor Room 108

Austin

Consumer Enforcement Division, Career Counseling

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearings to consider the possible revocation of the Respondent's certificate of authority, an award of damages to the consumer in the amount of $2,750.00, and assessment of administrative penalties against the Respondent, James Caldwell, President, Bernard Haldane Associates for violations of the Tex. Rev. Civ. Stat. Ann. Art. 5221–8 (the Act) §§ 5(a), 6(a) (two counts), 7, 8(c) and 9(c), pursuant to the Act, the Tex. Rev. Civ. Stat. Ann. Art. 9100, the Tex. Gov't. Code Ch. 2001 (APA), and 16 TAC Chs. 60 and 62.

Contact: Allyson Lednicky, 920 Colorado, E.O.Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: November 10, 1997, 4:25 p.m.

TRD-9715077

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Thursday, November 20, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor Room 108

Austin

Consumer Enforcement Division, Career Counseling

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible revocation of the Respondent's certificate of authority, an award of damages to the consumer in the amount of $4,050.00, and assessment of administrative penalties against the Respondent, James Caldwell, President, Bernard Haldane Associates, for violations of the Tex. Rev. Civ. Stat. Ann. Art. 5221–8 (the Act) §§ 5(a), 6(a) (two counts), 7, 8(c) and 9(c), pursuant to the Act, the Tex. Rev. Civ. Stat. Ann. Art. 9100, the Tex. Gov't. Code Ch. 2001 (APA), and 16 TAC Chs. 60 and 62.

Contact: Allyson Lednicky, 920 Colorado, E.O.Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: November 10, 1997, 4:25 p.m.

TRD-9715078

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Thursday, November 20, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor Room 108

Austin

Consumer Enforcement Division, Career Counseling

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administration penalties against the Respondent, James Caldwell, President, First Career, Inc., for violations of the Tex. Rev. Civ. Stat. Ann. Art. 5221–8 (the Act) §§ 3(a), 6(b) and 10, and 16 Tex. Admin. Code (TAC) §§62.20 (a) and 62.40(a), pursuant to the Act, The Tex. Rev. Civ. Stat. Ann. Art. 9100, the Tex. Gov't. Code Ch. 2001 (APA), and 16 TAC Chs. 60 and 62.

Contact: Allyson Lednicky, 920 Colorado, E.O.Thompson Building, Austin, Texas 78701 (512) 463–3192.
Filed: November 10, 1997, 4:26 p.m.

TRD-9715079

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Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Monday, November 17, 1997, 12:15 p.m.

301 Congress Avenue, Suite 500, Board Room

Austin

Special Board of Directors Meeting

AGENDA:

The following agenda is for a Special Meeting of the Board of Directors, called at the request of the Board Chair. Consideration and possible action on: 1) Approval of October 21, 1997 meeting minutes; 2) Appointment of Charles LaShelle as Executive Director of the Association; 3) Adoption of a contract for Administrative Services with LaShelle, Coffman, and Boles, Inc.; 4) Sale of fixed assets of the Association to LaShelle, Coffman, and Boles, Inc.; 5) Changes to the Association's Plan of Operation and Bylaws; and 6) Next meeting date.

Contact: C.S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476–5101.
Filed: November 7, 1997, 3:28 p.m.

TRD-9714909

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Texas Medical Disclosure Panel

Thursday, December 11, 1997, 10:30 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

The panel will discuss and possibly act on: approval of the minutes of the September 26, 1997, meeting; introduction of members and guests; review of public comments received on proposed rules concerning informed consent before the performance of a hysterectomy (25 Texas Administrative Code (TAC) §§601.4, 601.6, and 601.8) published in the October 31, 1997, issue of the Texas Register (22 TexReg 10615); final adoption of rules (25 TAC §§601.4, 601.6, and 601.8); emergency rules; public comment (may be limited to three minutes); and setting and next meeting date.

For ADA assistance, call Suzzanna C. Currier (512) 458–7627 or TDD (512) 458–7708 at least four days prior to the meeting.

Contact: Merrie Duflot, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6646.
Filed: November 10, 1997, 9:05 a.m.

TRD-9714982

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Midwestern State University

Thursday, November 13, 1997, 2:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Executive Committee

AGENDA:

The Executive Committee will review tour and receive demonstration of the Ferguson Building Interactive Classroom. The committee will review the 5/8/97 and 8/7/97 committee minutes and will receive recommendations and discuss the Five-Year Campus Plan; Lamar Fain Hall Renovation Project; TV2 Studio Upgrade; Special Items for the 2000–2001 Legislative Appropriations Request; and will discuss the sale of Southwest Parkway Land in Executive Session as allowed by Texas Government Code Chapter 551.072.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:18 p.m.

TRD-9714921

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Thursday, November 13, 1997, 3:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Finance and Audit Committee

AGENDA:

The Finance and Audit Committee will review minutes of the committee meeting of 8/7/97 and will receive recommendations and discuss the Internal Audit Plan 1996–1997 Year-End Summary Report, Investment Training, General Endowment Fund report, Mexican Exchange Program, Add/Drop Fee, 1997–1998 Non-Personnel Budget Adjustments; 1997–199 Personnel Budget Adjustments (to be discussed in Executive Session as allowed by Texas Government Code Chapter 551.074), Honors Program Funding, Scholarship Funding in 1998–1999, and Items $30,000 and under in FY 96–97 and FY 97–98 approved by President per Board authorization.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:19 p.m.

TRD-9714922

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Thursday, November 13, 1997, 4:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Personnel and Curriculum Committee

AGENDA:

The Personnel and Curriculum Committee will review minutes of the committee meeting of 8/7/97 and will receive fall enrollment and small class reports, and the last day enrollment report for summer 1997 semesters. The committee will receive recommendations and discuss position changes in the FY 96–97 and FY 97–98 budgets, Position Change/Intramural Director, change in Radiologic Sciences Curriculum and Deletion of Associate of Applied Science Degree in Radiography, and the addition of the Disability Grievance Procedure to the *MSU Policies and Procedures Manual*.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:19 p.m.

TRD-9714923

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Thursday, November 13, 1997, 4:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Student Services Committee

AGENDA:

The Student Services Committee will review minutes of the committee meeting of 8/7/97 and will receive a Student Government Report and will receive information and discuss the Americans with Disabilities Act (DA) Annual Report.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:19 p.m.

TRD-9714924

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Thursday, November 13, 1997, 4:45 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents University Development Committee

AGENDA:

The University Development Committee will review minutes of the committee meeting of 8/7/97 . Summaries of gifts, grants and pledges 9/1/96– 8/31/97 and 9/1/97–10/17/97. Resolutions of Appreciation will be presented for review as needed.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:19 p.m.

TRD-9714928

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Thursday, November 13, 1997, 5:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Athletic Committee

AGENDA:

The Athletics Committee will review minutes of the committee meeting of 8/7/97 and will receive an athletics update report. The Committee will receive recommendations and discuss the women's soccer coach position.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:21 p.m.

TRD-9714929

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Thursday, November 13, 1997, 5:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Athletic Committee

REVISED AGENDA:

An item will be added to the originally posted agenda to include the committee receiving recommendations and discussing athletics scholarships.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 10, 1997, 11:22 a.m.

TRD-9715013

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Friday, November 14, 1997, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The Board of Regents will consider the minutes of the August 8, October 9, and October 20, 1997 Board of Regents meeting and will review financial reports for the months ending July, August and September 1997. A Nominating Committee will be appointed to make a recommendation at the February 1998 Board meeting concerning the university president's contract for 1998–1999. The Board will consider recommendations and receive information from the Executive, Finance and Audit, Personnel and Curriculum, Student Services, University Development and Athletics Committees of the Board. A report will be presented by the President of the university concerning developments at MSU. The Board of Regents of Midwestern State University reserves the right to discuss any items in Executive Session whenever legally justified and properly posted in accordance with the Texas Government Code Chapter 551.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 7, 1997, 4:21 p.m.

TRD-9714930

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Friday, November 14, 1997, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

REVISED AGENDA:

An item will be added to the originally posted agenda to include the athletics committee recommendation concerning athletics scholarships.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 689–4212.
Filed: November 10, 1997, 11:22 a.m.

TRD-9715014

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Texas Municipal Retirement System

Friday, December 5, 1997, 2:00 p.m.

Double Tree Guest Suites, 303 West 15th Street

Austin

Board of Trustees Regular Meeting

AGENDA:

To hear and approve Minutes of the regular board of Trustees meeting held September 27, 1997 and October 17, 1997, meeting of the Advisory Committee on Retirement Matters; review and approve Service Retirements, Disability Retirements; review and approve Supplemental Death Benefits payments; Consider Extended Supplemental Death Benefits coverage; Review and act on Financial Statements; Consider and act upon request from Pension Review board for voluntary contributions; Consider and act on approval of form TMRS-DB, Application for Rollover of Distributive Benefit, to comply with IRC rules; Receive report from A. Gary Shilling and Company, Inc., Investment Advisors and Economic Consultant; Adjourn until 8:30 a.m. Saturday, December 6, 1997.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714–9153, (512) 476–7577.
Filed: November 7, 1997, 9:24 a.m.

TRD-9714831

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Saturday, December 6, 1997, 8:30 a.m.

Double Tree Guest Suites, 303 West 15th Street

Austin

Board of Trustees Regular Meeting

AGENDA:

Reconvene meeting from Friday, December 5, 1997; Consider and act on Proposed Budget for 1998; Consider and act on resolution transferring monies from Interest Reserve fund to Expense Fund; Consider and review function and composition of Advisory Committee on Retirement Matters; Election of 1998 Board Officers; Set dates for 1998 regular Board meetings; Report by Consulting Actuary; Director and Staff reports; report by Legal Counsel; Consider any other business to come before the Board.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714–9153, (512) 476–7577.
Filed: November 7, 1997, 9:24 a.m.

TRD-9714832

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Texas Natural Resource Conservation Commission

Wednesday, November 19, 1997, 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the agenda: Hearing Request; Class 2 Modification; Resolution; Contracts; Petition; Superfund; District; Air Enforcement Agreed Orders; Air Enforcement Default Orders; Petroleum Storage Tank Default Orders; Industrial Hazardous Waste Enforcement Default Orders; Public Water Supply Enforcement Agreed Orders; Multi Media Enforcement Agreed Orders; Industrial Waste Discharge Agreed Order; Industrial Waste Discharge Variance; Industrial Waste Amendment; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling any item in its entirety or for particular action at a future date and time. (Registration for 9:30 Agenda Starts 8:45 until 9:25) The Commission will consider the following item to be considered at the 1:00 agenda: Administrative Law Judge's Proposal for Decision. (Registration for 1:00 p.m. agenda starts at 12:30 p.m.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: November 7, 1997, 10:25 a.m.

TRD-9714850

♦ ♦ ♦

Wednesday, November 19, 1997, 9:30 a.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

REVISED AGENDA:

A Resolution concerning the General Counsel's authority to manage the Commission's public meetings. Also to consider the Motion of Rehearing filed on Dean Paul Sites numbers One and Two.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (412) 239–3317.
Filed: November 10, 1997, 4:05 p.m.

TRD-9715063

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Wednesday, November 19, 1997, 1:30 p.m.

711 West Bay Area Boulevard, Suite 210

Webster

Galveston Bay Estuary Program, Consistency Review Subcommittee

AGENDA:

I. Introduction of Participants

II. Approval of Meeting Summary

III. Update of On-Time Consistency Review of Wallisville Lake Project.

IV. Houston/Galveston Navigation Channels, Texas Project. The Program Office and Council Subcommittee Propose to Decline Review of this Project.

V. Staff Presentation of Any Notices that have Arrived Since Last Meeting.

VI. Consideration on Next Meeting Date. Adjourn.

Contact: Marilyn Browning, Galveston Bay Estuary Program, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (281) 316–3001.
Filed: November 6, 1997, 2:47 p.m.

TRD-9714772

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Board of Nurse Examiners

Thursday, November 20, 1997, 10:00 a.m.

333 Guadalupe Street, Tower 3, Suite 460

Austin

Competency Advisory Committee

AGENDA:

I. Call to Order

II. Charge to Committee

III. Priority setting

IV. Meeting dates

V. Adjournment

Contact: Wendy McRoberts, P.O. Box 430, Austin, Texas 78767, (512) 305–6817.
Filed: November 6, 1997, 10:27 a.m.

TRD-9714741

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Texas Optometry Board

Wednesday-Friday, November 19–21, 1997, 9:30 a.m., 10:30 a.m. and 9:00 a.m. respectively

333 Guadalupe Street, Suite 2–420

Austin

AGENDA:

At 9:30 on November 19, Investigation-Enforcement Committee will hold informal conferences thorughout day with licensees; beginning at 10:30 a.m. on November 20, informal conferences will continue , followed by committee meetings to begin at 1:30 p.m. throughout afternoon as shown on agenda. At 9:00 on November 21st, Board Meeting will be held to consider reports of Secretary-Treasurer, legal counsel, executive director, committee chairpersons, conference attendees; consider matters involving Health Professions Council, Board fiscal matters and reports; general matters affecting the agency; introduce staff attorney; public comment time certain of 10:30 a.m.; consider settlement agreements as a result of informal conferences held; adopt proposed Rule amendment 275.1 regarding continuing education; consider adoption of proposed rule amendment 279.1 regarding contact lens prescriptions; Medicaid CPT codes clarification; consider new complaint sign and information pamphlet; Executive Session to be held in compliance with 551.071 of the Government Code to discuss contemplated and pending litigation with Board attorney and matters referred to Attorney General; consideration and possible vote on matters discussed in Executive Session.

Contact: Lois Ewald, 333 Guadalupe, Suite 2–420, Austin, Texas 78701–3942, (512) 305–8500.
Filed: November 10, 1997, 9:04 a.m.

TRD-9714979

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Texas State Board of Pharmacy

Friday, November 21, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100

Austin

Disciplinary Hearing

AGENDA:

The State Office of Administrative Hearings will conduct a disciplinary hearing in the matter of: Luther B. Brotherton, III, R.Ph.; License #18999; Case B-97–022.

Contact: Carol Fisher, 333 Guadalupe Street, 3–600, Box 21, Austin, Texas 78701–3942, (512) 305–8000.
Filed: November 6, 1997, 11:56 a.m.

TRD-9714754

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Texas Department of Public Safety

Thursday, November 20, 1997, 3:00 p.m.

5805 North Lamar Boulevard

Austin

Governor's Division of Emergency Management, Drought Response and Monitoring Committee

AGENDA: Drought Response and Monitoring Committee

Welcome and Introductions

Current/Pending Water Shortages

Action Items: Review of last meeting minutes and On-Going strategies

Other Issues and Concerns

Adjournment

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact DeDe McKee at (512) 424–5989 three work days prior to the meeting so that appropriate arrangements can be made.

Contact: Juan Perales, 5805 North Lamar Boulevard, Austin, Texas 78773–0220, (512) 424–2452.
Filed: November 6, 1997, 8:35 a.m.

TRD-9714722

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Public Utility Commission of Texas

Friday, November 14, 1997, 10:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

A prehearing conference is scheduled for the above date and time in Docket Number 18249: Entergy Gulf States, Inc. Service Quality Issued (Severed from Docket Number 16705).

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: November 5, 1997, 1:56 p.m.

TRD-9714697

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Monday, November 17, 1997, 1:30 p.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration and possible action regarding: Docket Numbers 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, 17781; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: November 6, 1997, 4:07 p.m.

TRD-9714811

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Tuesday, November 18, 1997, 1:30 p.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration and possible action regarding: Docket Numbers 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, 17781; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: November 6, 1997, 4:07 p.m.

TRD-9714812

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Wednesday, November 19, 1997, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration and possible action regarding: Docket Numbers 17410, 16705, 17899, 17751, 17741; Project Number 14908, Nuclear Decommissioning Trusts; 17713, Houston Lighting and Power Company Public Participation; 1996 Earnings Monitoring Reports; Electric industry restructuring, electric utility reliability and customer service; Project Number 18000, informal Dispute Resolution; Project Number 17508, Standards for Contract Approval Under FTA97 §103; Docket Numbers 17777, 17768, 17930, 17898, 17856, 17857, 17858, 17859, 17862, 17863, 17867, 17868, 17883, 17894, 17895, 17900, 17725, 17778, 17882, 17909, 17946, 17976, 18007, 18010, 18012, 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, 17781; Project Number 16899, Numbering Plan Area Code Relief Planning for the 214/972 Area Codes; Project Number 16900, Number Plan Area Code Relief Planning for the 713/281 Area Codes; Project Number 16901, Numbering Plan Area Code Relief Planning for the 512 Area Codes; Project Number 16091, Permanent Number Portability; Project Number 17068, Reclassification of Telecommunications Services for Electing ILECs; Project Number 14929, Universal Service Issues; letter to the Federal Communications Commission stating that the PUC of Texas has adopted educational discount rates (E-rates) for intrastate telecommunications services; Incumbent Local Exchange Company Compliance with PURA Chapter 60 and FTA §251; federal Telecommunications Act of 1996, including but not limited to FCC Docket Number CC-97–137 and other actions taken by the Federal Communications Commission; Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Customer service issues, including but not limited to correspondence and complaint issues; agency plans, priorities and budgets for the coming biennium; Project assignments, correspondence, staff reports, audit agency administrative procedures, budget, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: November 10, 1997, 4:57 p.m.

TRD-9715082

♦ ♦ ♦

Thursday, November 20, 1997, 9:00 a.m.

John H. Reagan Building, 105 West 15th Street, Room 104

Austin

AGENDA:

Project Number 14894: A meeting of the Synchronous Interconnection Committee (SIC) will be held to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of electric utilities within the Southwest Power Pool reliability area, including the cost and benefit to effect the interconnection, an estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those utilities will be located, pursuant to Tex. Rev.Civ. Stat. Art. 1446c-0, §2.056(b).

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7265.
Filed: November 12, 1997, 11:29 a.m.

TRD-9715182

♦ ♦ ♦

Thursday, November 20, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be convened in Docket Number 18249–Entergy Gulf States, Inc. Service Quality Issues (Severed from Docket Number 16705).

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: November 5, 1997, 1:56 p.m.

TRD-9714698

♦ ♦ ♦

Texas Council on Purchasing from People with Disabilities

Monday, November 17, 1997, 10:00 a.m.

Capitol Extension, Room E2.026, 1400 North Congress Avenue

Austin

Performance Subcommittee Work Session

AGENDA:

Call Work Session to Order;

Staff, Guests, and Members Present;

Discuss and Draft Request for Proposal (RFP) for Contracting with Central Nonprofit Agency (CNA);

Other Business; and

Adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Erica Goldbloom at (512) 463–3244 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Chester Beattie Jr., 1711 San Jacinto, Austin, Texas 78701, (512) 463–3583.
Filed: November 6, 1997, 3:20 p.m.

TRD-9714782

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Texas Board of Physical Therapy Examiners

Monday, November 17, 1997, 7:00 p.m.

333 Guadalupe Street, Suite 2–510

Austin

Application Review Committee

AGENDA:

I. Call to Order

II. Consideration and possible recommendations regarding application of Rachael Laponsey.

III. Consideration and possible recommendations regarding application of Antonio Mazu.

IV. Consideration and possible recommendations regarding application of Genevieve Lebel.

V. Consideration and possible recommendations regarding application of Sue Legg-Matthews.

VI. Consideration and possible recommendations regarding application of Leah Zbrebker.

VII. Consideration and possible recommendations regarding application of Elline Salandanan.

VIII. Consideration and possible recommendations regarding application of Ambika Ramamurthy.

IX. Consideration and possible recommendations regarding application of Joyce Urban.

X. Discussion and possible changes to chapter 329, relating to licensing procedures.

Contact: Nina Hurter, 333 Guadalupe Street, Suite 2–510, Austin, Texas 78701, (512) 305–6900.
Filed: November 6, 1997, 4:05 p.m.

TRD-9714809

♦ ♦ ♦

Tuesday, November 18, 1997, 9:45 a.m.

333 Guadalupe Street, Suite 2–510

Austin

Education Committee

AGENDA:

I. Call to Order

II. Review and possible recommendations on proposed revision of Chapter 343.3e(3).

III. Discussion and possible change in Chapter 321.1 (Duties of the physical therapist assistant).

IV. Discussion and finalize evaluation checklist which credentialing agency must use regarding Chapter 329.5(g)(11)

V. Discussion regarding sending a list of all licensed facilities to all licensees.

VI. Discussion and possible changes on jurisprudence exam.

VII. Discussion regarding Health Professional Educators Sponsorship.

VIII. Discussion regarding receiving more information from PES regarding failures.

Contact: Nina Hurter, 333 Guadalupe Street, Suite 2–510, Austin, Texas 78701, (512) 305–6900.
Filed: November 6, 1997, 4:05 p.m.

TRD-9714807

♦ ♦ ♦

Tuesday, November 18, 1997, 9:45 a.m.

333 Guadalupe Street, Suite 2–510

Austin

Rules Committee

AGENDA:

I. Call to Order

II. Review and possible recommendations on proposed revision of Chapter 343.3e(3).

III. Discussion and possible change in Chapter 321.1 (Duties of the physical therapist assistant).

IV. Discussion and finalize evaluation checklist which credentialing agency must use regarding Chapter 329.5(g)(11) Guidelines for board approved education credentialing agencies.

V. Discussion regarding sending a list of all licensed facilities to all licensees.

VI. Discussion and possible changes on jurisprudence exam.

VII. Discussion regarding Health Professional Educators Sponsorship.

VIII. Discussion regarding receiving more information from PES regarding failures.

Contact: Nina Hurter, 333 Guadalupe Street, Suite 2–510, Austin, Texas 78701, (512) 305–6900.
Filed: November 6, 1997, 4:05 p.m.

TRD-9714808

♦ ♦ ♦

Texas Racing Commission

Friday, November 14, 1997, 10:00 a.m.

1101 Camino La Costa, Room 235

Austin

AGENDA:

Call to Order; Roll Call; Consideration of and action on the following rules: §§303.2, 303.7, 303.8, 303.42, 303.101, 305.5, 305.7, 309.32, 305.33, 305.70, 305.301, 307.261, 309.18, 311.106, 313.21, 313.22, 313.166, 313.406, 313.408, 315.2, 315.3, 319.10, 319.336, 321.252; Consideration and action on the following matters: FY 1998 Operating Budget; Information Services Biennial Operating Plan FY 1998–2001; Appointment of subcommittee for strategic planning; Resolution on standards for implementing §56, Chapter 1275, Acts of the 75th Legislature, 1997; Request by Parker County's Squaw Creek Downs, LP for designation of application period to receive applications for Class 2 racetrack license in Parker County; Request by Retama Park for approval of change in ownership; Allocation of revenue generated in 1997 at horse racetracks from cross-species simulcasting for Texas Bred Incentive Programs; Requests by pari-mutuel horse racetracks for approval of proposed allocation among the various breeds of revenue generated in 1998 for purses and Texas Bred Incentive Programs; Report on Racetrack Inspections; Executive session pursuant to Texas Government Code §551.071(1) to met with attorneys to seek legal advice regarding pending and/or anticipated litigation regarding complaint filed with Department of Labor; Executive session pursuant to Texas Racing Act, V.T.C.S. Art. 179e, §6.03(b) to consider management contract for Retama Park and totalisator contract for Sam Houston Race Park; Executive session pursuant to Texas Government Code §551.074 to deliberate personnel matters: the appointment, employment, evaluation, reassignment, duties, compensation, discipline or dismissal of the executive secretary; Action on management contract for Retama Park and totalisator contract for Sam Houston Race Park; Old and New Business; Adjourn.

Contact: Paula C. Flowerday, P.O. Box 12080, Austin, Texas 78711, (512) 833–6699.
Filed: November 6, 1997, 2:48 p.m.

TRD-9714775

♦ ♦ ♦

Railroad Commission of Texas

Friday, November 14, 1997, 1:00 p.m.

Concourse Clarion Hotel, 6789 Boeing Drive, Oxford A and B Rooms

El Paso

Board

AGENDA:

The Railroad Commission of Texas may discuss an Action Plan to Improve Rail Service and Safety in Texas including, but not limited to, consideration of the Surface Transportation Board's review of Rail Service in the Western United States and the effect of the Union Pacific/Southern Pacific railroad merger thereon, and the Commission may take action thereon as may be appropriate.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: November 5, 1997, 2:46 p.m.

TRD-9714703

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State Office of Risk Management

Tuesday, November 18, 1997, 10:15 a.m.

William Clements Building, Court Room 5, Fifth Floor, 300 West 15th Street

Austin

Executive Director Hiring Subcommittee

AGENDA:

1. Call to order;

2. Executive Session: Pursuant to §551.074, Government Code, to consider personnel, related matters involving public officers or employees, and pursuant to §551.071, Government Code, to discuss matters relating to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation including, but not limited to discussion of applicants for Executive Director position;

3. Action on matters considered in executive session;

4. Confirmation of future meeting dates;

5. Adjournment.

Contact: Albert Betts, Jr., P.O. Box 13777, Austin, Texas 78711, (512) 475–1440.
Filed: November 6, 1997, 3:20 p.m.

TRD-9714784

♦ ♦ ♦

Texas Strategic Military Planning Commission

Tuesday, November 18, 1997, 8:30 a.m.

Teacher Retirement System, 1000 Red River, Fifth Floor Board Room

Austin

AGENDA:

8:30 a.m.; Call to Order; Introduction of Commission Members; Mission and Concept of Operations; Legislative Mandate; Organization and Introduction of Staff; Highlights on Ethics, Open Meetings and Open Records; Communications/Media Interactions; Budget and Fiduciary Responsibilities; Travel Rules; Appoint two Members (and Alternates) to serve on RFP Committee; Short-Term Milestones (November 18– December 18, 1997); Mid-Term Milestones (January-April 1998); Schedule of Future Meetings Dates; Commissioners Comments and Observations; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936–0158.
Filed: November 10, 1997, 9:12 a.m.

TRD-9714986

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Teacher Retirement System of Texas

Tuesday, November 18, 1997, Noon

1000 Red River, Room 320E

Austin

Medical Board

AGENDA:

Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

For ADA assistance, call John Mercer, (512) 397–6400 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6400.
Filed: November 6, 1997, 11:56 a.m.

TRD-9714752

♦ ♦ ♦

Telecommunications Infrastructure Fund Board

November 14, 1997, 8:30 a.m.

1000 Red River, Fifth Floor Board Room

Libraries and Telemedicine Committee

AGENDA:

The Libraries and Telemedicine Committee of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call Committee Meeting to Order Open Meeting/Quorum Call — Chairman John Collins

II. Minutes from Prior Meetings

III. Reports from Advisory Committees

IV. Future Agenda Items

V. Adjourn Committee Meeting

Contact: Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469–3067.
Filed: November 5, 1997, 4:14 p.m.

TRD-9714714

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November 14, 1997, 9:00 a.m.

1000 Red River, Fifth Floor Board Room

Board

AGENDA:

The Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call to Order Open Meeting/Quorum Call — Chairman Bill Mitchell

II. Minutes from Prior Meetings

III. Connectivity Planning Conference Donation by IBM

IV. Presentation by Al Gainer, Technology Partners, Nashville, Tennessee

V. Agency Update

•Report from Executive Director

A. Programs

B. Administration

VI. Board Committee Reports

•Finance and Audit Committee — Roger Benavides, Chair

•Libraries and Telemedicine Committee — John Collins, Chair

•Curriculum, Training and Evaluation Committee — Joe Randolph, Chair

VII. Discovery RFP

•Distance Learning- Funding of Grant Proposal by Texas Tech University for state's participation in Western Governors University

VIII. Future Agenda Items

IX. Adjourn Open Meeting

Contact: Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469–3067.
Filed: November 5, 1997, 4:14 p.m.

TRD-9714713

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University of North Texas/University of North Texas Health Science Center

Wednesday, November 12, 1997, 1:30 p.m.

3516 Camp Bowie Boulevard, Rare Book Room, Medical Education III, UNT Health Science Center

Fort Worth

Board of Regents, Role and Scope Committee

AGENDA:

UNTHSC: Physician Assistant Program Conversion; Certificate of Financial Assurance for Decommissioning; MSRDP Year-End Report

UNT: Small Class Report for Fall, 1997; Faculty on Leaves of Absence Without Pay, 1996–1997; Regents' Faculty Lecture Series; Emeritus Recommendations; Master of Science Degree Program in Criminal Justice; Certificate of Financial Assurance for Decommissioning

UNT: Personnel Transactions for UNT and UNTHSC: Authorization for UNTHSC/UNT to Develop a Proposal for a School of Public Health; Resolutions of Appreciation for Mr. W. David Bayless, Sr., Ms. Nancy Halbreich, and Mr. Don Rives.

Contact: Jana Dean, P.O. Box 311220, Denton, Texas 76203, (940) 369–8515.
Filed: November 7, 1997, 10:26 a.m.

TRD-9714853

♦ ♦ ♦

Wednesday, November 12, 1997, 1:30 p.m.

3516 Camp Bowie Boulevard, Room 810, Medical Education I, UNT Health Science Center

Fort Worth

Board of Regents, Budget and Finance Committee

AGENDA:

UNTHSC: Investment Policy; Quarterly Investment Report; Gift Report; Investment Report; Internal Audit Update

UNT: Fees for Mini-Semester; Investment Policy; National Student Exchange Fee; Internal Audit Plan for the 1998 Fiscal Year; Quarterly Investment Report; Gift Report; Investment Report; Internal Audit Update

Contact: Jana Dean, P.O. Box 311220, Denton, Texas 76203, (940) 369–8515.
Filed: November 7, 1997, 10:26 a.m.

TRD-9714854

♦ ♦ ♦

Wednesday, November 12, 1997, 3:30 p.m.

3516 Camp Bowie Boulevard, Founders Board Room, Medical Education I, UNT Health Science Center

Fort Worth

Board of Regents, Facilities Committee

AGENDA:

UNTHSC: Patient Care Center – Finish Out Level 3–6; Parking Garage; Project Status Report; Update of Master Plan

UNT: West Hall Renovation; Speech and Hearing Clinic; Project Status Report

Contact: Jana Dean, P.O. Box 311220, Denton, Texas 76203, (940) 369–8515.
Filed: November 7, 1997, 10:26 a.m.

TRD-9714855

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Wednesday, November 12, 1997, 3:30 p.m.

3516 Camp Bowie Boulevard, Room 810, Medical Education I, UNT Health Science Center

Fort Worth

Board of Regents, Advancement Committee

AGENDA:

UNTHSC: Gift Report; UNTHSC/TCOM Foundation Update

UNT: Gift Report; Capital Campaign Update; Public Affairs Update; Athletics Update

Contact: Jana Dean, P.O. Box 311220, Denton, Texas 76203, (940) 369–8515.
Filed: November 7, 1997, 10:26 a.m.

TRD-9714856

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Thursday, November 13, 1997, 8:00 a.m.

3500 Camp Bowie Boulevard, Founders Board Room, Medical Education Building I, Eighth Floor

Fort Worth

Board of Regents

AGENDA:

UNTHSC: App. of Min.; Exec. Sess. (UNT/UNTHSC: Leg. Update; D&O Insurance; IRS Audit;

UNTHSC: Affiliations; Update on Lawsuits; UNT: Update on Ofc. of Dev.; Asbestos Update; Minority Student Issues; Update on Lawsuits; Dallas Educ. Center; Appt. of Internal Auditor); Football and Basketball Pers. Issues; Update on Searches; Admin. and Staff Changes.; Physician Asst. Prog. Conversion; Cert. of Financial Assurance for Decommissioning; Investment Policy; Quarterly Invest. Rep.; Gift Rpt.; Patient Care Center; Parking Garage; Proj. Status Rpt.; Pres. Update on the Heritage Proj.

UNT: App. of Min.; Sm. Class Rpt.; Fac. on Leaves of Absence Without Pay; Regents' Fac. Lecture Series; Emer. Rec.; MS Degree Program in Criminal Justice; Cert. of Financial Assurance for Decommissioning; Fees for Mini-Semester; Investment Policy; National Student Exchange Fee; Internal Audit Plan for the 1998 Fiscal Year; Quarterly Investment Rpt.; Gift Rpt.; West Hall Renov.; Speech and Hearing Clinic; Proj. Status Rpt.

UNT/UNTHSC: Pers. Trans.; Authorization for UNTHSC/UNT to Develop a Proposal for a School of Public Health; Resolutions of Appreciation for Mr. W. David Bayless, Sr., Ms. Nancy Halbreich, and Mr. Don Rives by UNT and UNTHSC; Chancellor's Update of Texas Commission on a More Representative Student Body and NCATE Accreditation; Election of V. Chair.

Contact: Jana Dean, P.O. Box 311220, Denton, Texas 76203, (940) 369–8515.
Filed: November 7, 1997, 10:26 a.m.

TRD-9714852

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University Interscholastic League

Wednesday, November 12, 1997, 9:00 p.m.

Omni Southpark Hotel, IH35 South at Ben White Boulevard

Austin

State Executive Committee

EMERGENCY MEETING AGENDA:

AA. Fort Worth Arlington Heights High School Case Referred by District 6–AAAA Executive Committee with Findings and Recommendations of Penalty to Coach Ed Koester for Violations of Off-Season Regulations.

BB. Violation of the Athletic Code by Round Rock Westwood High School Student Athletes at the UIL State Team Tennis Tournament.

CC. Dallas Madison High School Case Referred by district 11–AAA Executive Committee with Recommendation of Penalty of Public Reprimand and One Year's Probation for Coach Sam West.

REASON FOR EMERGENCY: Fort Worth Arlington Heights case must be heard before next playoff date. Round rock Westwood and Dallas Madison were referred to committee and will be heard while the committee is convened.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471–5883.
Filed: November 10, 1997, 4:06 p.m.

TRD-9715064

♦ ♦ ♦

Wednesday, November 12, 1997, 9:00 p.m.

Omni Southpark Hotel, IH35 South at Ben White Boulevard

Austin

State Executive Committee

EMERGENCY REVISED MEETING AGENDA:

AA. Fort Worth Arlington Heights High School Case Referred by District 6–AAAA Executive Committee with Findings and Recommendations of Penalty to Coach Ed Koester for Violations of Off-Season Regulations.

BB. Violation of the Athletic Code by Round Rock Westwood High School Student Athletes at the UIL State Team Tennis Tournament.

CC. Dallas Madison High School Case Referred by District 11–AAA Executive Committee with Recommendation of Penalty of Public Reprimand and One Year's Probation for Coach Sam West.

DD. Appeal of District Executive Committee Decision Ruling a Student Athlete at Paris North Lamar High School Ineligible and Forfeiting the Game in which He Participated.

REASON FOR EMERGENCY: Fort Worth Arlington Heights case must be heard before next playoff date. Round Rock, Westwood and Dallas Madison were referred to committee and will be heard while the committee is convened.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471–5883.
Filed: November 12, 1997, 8:04 a.m.

TRD-9715085

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The University of Texas at Austin

Wednesday, November 12, 1997, 3:30 p.m.

21st and San Jacinto Streets, Bellmont Hall 326

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order

II. Approval of Minutes of Previous Meeting

III. New Business

IV. Announcement/Information Reports

V. Executive Session

Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees — §551.074 or the Texas Government Code.

VI. Adjournment

Contact: Jody Conradt, Bellmont Hall 718, Austin, Texas 78712–1286, (512) 449–4402.
Filed: November 6, 1997, 12:05 a.m.

TRD-9714755

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The University of Texas System

Wednesday-Thursday, November 12–13, 1997, 2:45 p.m. and 9:00 a.m. respectively

11/12 — Cancun B, Four Points Hotel by Sheraton, 3777 North Expressway; 11/13 — Gorgas Board Room, Gorgas Hall, U.T. Brownsville, 80 Fort Brown

Brownsville

Board of Regents and Standing Committees

EMERGENCY REVISED AGENDA:

The purpose of this notice is to amend the convening time of the November 12, 1997, meeting from 3:30 p.m. to 2:45 p.m. All other factors related to the meetings on November 12 and 13, 1997 remain as posted on November 4, 1997.

REASON FOR EMERGENCY: To change meeting time on November 12 and 13, from 3:30 p.m. to 2:45 p.m. to ensure presence of a quorum.

Contact: Arthur Dilly, 201 West Seventh Street, Austin, Texas 78701–2981, (512) 449–4402.
Filed: November 10, 1997, 4:57 p.m.

TRD-9715083

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University of Texas Health Science Center at San Antonio

Wednesday, November 19, 1997, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of Minutes

2. Protocol for Review (See Attached)

3. Subcommittee Reports

4. Other Business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284–7822, (210) 567–3717
Filed: November 10, 1997, 2:22 p.m.

TRD-9715053

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Texas Veterans Commission

Friday, November 21, 1997, 9:30 a.m.

E.O. Thompson Building, 6th Floor, 10th and Colorado Street

Austin

First Quarterly Meeting

AGENDA:

Regular meeting to approve the minutes of the fourth quarterly meeting. The Commission will hold election of officers and receive a staff report on the status of the State Veterans Cemetery. The Commission will also discuss matters concerning veterans' benefits and services, receive staff reports and conduct other routine business of the Commission. The Commission will take action on these matters as it deems appropriate.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who

are deaf or hearing impaired, readers, or large print are requested to contact Billy Green, Deputy Administrator, at (512) 463–5538, two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463–5538.
Filed: November 5, 1997, 3:42 p.m.

TRD-9714710

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Texas Water Development Board

Wednesday, November 19, 1997, 3:00 p.m.

El Paso Water Utilities Public Service Board, Board Room, 1154 Hawkins Boulevard

El Paso

Finance Committee

AGENDA:

1. Consider approving the minutes of the meeting of October 15, 1997.

2. Briefing and discussion on projects involving self-help efforts and the status of the TWDB Community Self-Help Program (CSHP).

3. Consider approving a $1,370,459 grant/loan to the City of Harlingen (Cameron County) for the construction and acquisition of wastewater system improvements to serve the Arroyo Colorado Estates and Bishop-Leal subdivisions (Economically Distressed Areas Program).

4. Consider approving a $774,000 grant/loan to the Military Highway Water Supply Corporation (South Tower Estates)(Hidalgo County) for the construction of a new wastewater collection system (Economically Distressed Areas Program).

5. Briefing and discussion on the results of the $300,000,000 State Revolving Fund Program Series 1997B bond transaction senior managed by Morgan Stanley and Company, Inc.

6. Briefing and discussion on Horizon City water issues.

7. Briefing and discussion on present and future EDAP projects.

8. Status Report- Memorandum of Understanding (MOU) with the Texas Department of Housing and Community Affairs (TDHCA).

9. Report on the status of approved contracts.

10. May consider items on the agenda of the November 20, 1997 Board meeting.

* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463–7847.
Filed: November 10, 1997, 12:01 p.m.

TRD-9715041

♦ ♦ ♦

Wednesday, November 19, 1997, 3:00 p.m.

El Paso Water Utilities Public Service Board, Board Room, 1154 Hawkins Boulevard

El Paso

Finance Committee

REVISED AGENDA:

6. Briefing and discussion on Horizon City and other projects and water-related issues in the El Paso area.

* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463–7847.
Filed: November 10, 1997, 2:22 p.m.

TRD-9715051

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Thursday, November 20, 1997, 9:00 a.m.

City Council Chambers, El Paso City Hall, 2 Civic Center Plaza

El Paso

AGENDA:

The Board will consider: minutes; El Paso area projects, committee, executive and financial reports; a resolution commending the City of Houston; financial assistance to San Juan, Angelton, Tom Green Co. Water Control and Improvement District One, So. Plains Underground Water Conservation Dist., Taylor, Seguin, Sweetwater, Cibolo Creek Municipal Authority, and Longview; a one-year renewal option on the Financial Advisory Contract with First Southwest company; contracts for water supply facility and wastewater facility planning and transfer of funds; contract with Upper Colorado River Authority for Hydraulic study of the North Concho watershed and transfer of funds; amendments to Chapter 365, Investment Rules and new Chapter 356, Groundwater Management Plan Certification rules; publication of proposed amendments to Chapter 359, Water Banking, and Chapter 367; Agricultural Water Conservation Program; the Biennial Operating Plan for Information Resources; authority to submit requests to the Texas Public Finance Authority to issue bonds to finance data collection equipment authorized by Senate Bill 1 and execute a Master Lease Agreement; contracts to purchase and install monitoring equipment authorized by Senate Bill 1: the State Participation Program and authority to accept applications for funding; public meeting on draft rules for water planning under Senate Bill 1 and draft regional boundary delineations; and appointments to the San Jacinto River Authority board of directors.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463–7847.
Filed: November 12, 1997, 10:44 a.m.

TRD-9715179

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Texas Water Resources Finance Authority

Thursday, November 20, 1997, 9:00 a.m.

City Council Chambers, El Paso City Hall, 2 Civic Center Plaza

El Paso

Texas Water Resources Finance Authority

AGENDA:

1. Consider approving the minutes of the meeting of July 16, 1997.

2. Consider approving a one-year renewal option on the Financial Advisory contract with First Southwest Company.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463–7847.
Filed: November 12, 1997, 10:44 a.m.

TRD-9715180

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Texas Workforce Commission

Sunday, November 16, 1997, 2:30 p.m.

University of Texas at Austin, Charles A. Darwin Center

Austin

Texas Commission on Volunteerism and Community Service

AGENDA:

Reading and approval of minutes of September meeting; Executive Director's report, Election of Executive Committee; Executive Committee report; Reports of standing committees; Other business and announcements.

Contact: Barbara Dubose, 310 Stephen F. Austin Building, Austin, Texas 78711, (512) 475–1727.
Filed: November 7, 1997, 4:00 p.m.

TRD-9714913

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Tuesday, November 18, 1997, 9:00 a.m.

101 East 15th Street, Room 644, TWC Building

Austin

AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to House Bill 2777; (2) publication in the *Texas Register* of proposed incentive and sanction rule for local workforce boards; (3) potential and pending applications for certification of local workforce development boards; (4) recommendations to TCWEC of operational plans of local workforce development boards; (5) approval of local workforce board or private industry council nominees; (6) acceptance of donations of child care matching funds; (7) the length of time that people remain on Unemployment Insurance; (8) fraud in the application for Unemployment Insurance; (9) adoption of amendments to TWC rule relating to charges for copies of public records (40 TAC §§800.71–800.75); (10) Adoption of rule relating to the Self Sufficiency Fund (40 TAC §§835.1=835.33); (11) proposed amendments to child care rule relating to parent fees (40 TAC §809.) Discussion regarding: Revision of rules related to the TANF employment program and rules related to Full Employment Pilot Project, local innovation grants, including micro enterprise, Texans Work and Wheels to Work, and on allowing local workforce development boards to determine what programs they will administer and whether or not to set deadlines on the boards' plan submission. EXECUTIVE SESSION pursuant to Government Code §551.074 to discuss the duties and responsibilities of the Executive Staff and other personnel; §551.071(1) concerning the pending litigation of the Texas AFL-CIO v. TWC; and §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss Open Meetings Act and Administrative Procedures Act; Actions, if any, resulting from executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases on Dockets 46 and 47 and 47A; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463–7833.
Filed: November 10, 1997, 4:12 p.m.

TRD-9715072

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Texas Youth Commission

Wednesday, November 19, 1997, 4:15 p.m.

4900 North Lamar, Second Floor, Executive Conference Room

Austin

Board Audit Committee

AGENDA:

Approval of Audit Report on Public Funds Investment Act Compliance (Action)

Approval of Audit Report on Interagency Contracts for Managed Care (Action)

Status of Projects (Information)

Contact: Eleanor Bryant, P.O. Box 4260, Austin, Texas 78765, (512) 424–6001.
Filed: November 10, 1997, 9:41 a.m.

TRD-9714994

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Wednesday, November 19, 1997, 5:30 p.m.

4900 North Lamar, Second Floor, Executive Conference Room

Austin

Board Education Committee

AGENDA:

Approval of TIF Grant (Action)

PIE Update (Information)

Juvenile Justice Distance Learning Consortium (Information)

Contact: Eleanor Bryant, P.O. Box 4260, Austin, Texas 78765, (512) 424–6001.
Filed: November 10, 1997, 9:41 a.m.

TRD-9714993

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Thursday, November 20, 1997, 7:30 a.m.

4900 North Lamar, Second Floor, Executive Conference Room

Austin

Board Construction Committee

AGENDA:

1. Approval of Meeting Minutes of September 17, 1997

II. FY 1994–1995 Construction Program Update

A. Project Budget/Status

B. Program Budget

C. Project Schedules

III. FY 1996–1997 Construction Program Update

A. Existing Facilities

1. Project Budget/Status

2. Project Schedules

B. Conversion Projects

1. Project Budget

2. Project Schedules

C. Program Budget

IV. Board Agenda Items

V. Other

Contact: Eleanor Bryant, P.O. Box 4260, Austin, Texas 78765, (512) 424–6001.
Filed: November 10, 1997, 9:42 a.m.

TRD-9714995

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Thursday, November 20, 1997, 9:00 a.m.

4900 North Lamar, Public Hearing Rooms, Room 1420 and 1430

Austin

Board

AGENDA:

Approval of the Minutes of the September 18, 1997, Board Meeting (Action)

Executive Director's Report (Information)

Public Comments (Information)

Role of Vice-Chair (Action)

Approval of TYC/TJPC Coordinated Strategic Plan (Action)

Approval of Site for New TYC Facility (Action)

Review of Alleged Mistreatment Investigations (Information)

Approval of TIF Grant (Action)

Approval of Resolution to Authorize the Texas Public Finance Authority to Issue Bonds for the FY 1998–1999 Construction Appropriations (Action)

Approval of Owner Contract Agreement for Parking Lot Expansion at Giddings State School (Action)

Approval of Audit Report on TYC Compliance with Public Funds Investment Act (Action)

Approval of Audit Report on Interagency Contracts for Managed Care Services (Action)

Contact: Eleanor Bryant, P.O. Box 4260, Austin, Texas 78765, (512) 424–6001.
Filed: November 10, 1997, 9:42 a.m.

TRD-9714996

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Regional Meetings

Meetings filed November 5, 1997

Austin Transportation Study, Policy Advisory Committee, met at Joe C. Thompson Conference Center, Room 2.102, 26th and Red River, Austin, November 10, 1997 at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West Second Street, Austin, Texas 78701, (512) 499–2275. TRD-9714715.

Bi-County Water Supply Corporation, met at Arch Davis Road, FM 2254, Pittsburg, November 11, 1997 at 7:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 75686, (903) 856–5840. TRD-9714712.

Concho Valley Council of Governments, Economic Development District, met at 5014 Knickerbocker Road, San Angelo, November 12, 1997 at 2:00 p.m. Information may be obtained from Troy Williamson, P.O. Box 60050, San Angelo, Texas 76906, (915) 944–9666. TRD-9714705.

Concho Valley Council of Governments, Executive Committee, met at 5014 Knickerbocker Road, San Angelo, November 12, 1997 at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944–9666. TRD-9714704.

Deep East Texas Local Workforce Development Board, Planning/ Budget Education Advisory Subcommittee, met at 300 East Shepherd, Lufkin City Hall; Room 202, Lufkin, November 18, 1997 at 1:00 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75902, (409) 634–2247. TRD-9714716.

Deep East Texas Local Workforce Development Board, met at 300 East Shepherd, Lufkin City Hall; Room 202, Lufkin, November 18, 1997 at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75902, (409) 634–2247. TRD-9714717.

High Plains Underground Water Conservation District One, Board, met at 2930 Avenue Q, Board Room, Lubbock, November 11, 1997 at 10:00 a.m. with revised agenda. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (906) 762–0181. TRD-9714706.

South Plains Association of Governments, Board of Directors, met at 1323 58th Street, Lubbock, November 11, 1997 at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452–3730, (806) 762–8721. TRD-9714708.

South Plains Association of Governments, Executive Committee, met at 1323 58th Street, Lubbock, November 11, 1997, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730 Freedom Station, Lubbock, Texas, 79452–3730, (806) 762–8721. TRD-9714709.

Texas Automobile Insurance Plan Association, Governing Committee, met at 4140 Governor's Row, Omni Hotel, Southpark, Austin, November 13, 1997 at 8:30 a.m. Information may be obtained from Dianna Brooks, P.O. Box 18447, Austin, Texas 78760–8447, (512) 444–5999. TRD-9714711.

Meetings filed November 6, 1997

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, Executive Session, met at 1124A Regal Row, Austin, November 13, 1997 at 6:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9714768.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, Called Meeting, met at 1124A Regal Row, Austin, November 13, 1997 at 6:00 p.m. Information may be obtained from

Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9714767.

Bexar-Medina-Atascosa Counties Water Control and Improvement District One, Board of Directors, met at 226 Highway 132, Natalia, November 11, 1997 at 8:30 a.m. Information may be obtained from J.W. Ward III, 226 Highway 132, Natalia, Texas 78059, (210) 665–2132. TRD-9714766.

Bluebonnet Trails Community MHMR Center, Board of Trustees, met at Bluebonnet Trails CMHMR Center, 555A Round Rock West Drive, Round Rock, November 13, 1997 at 4:00 p.m. Information may be obtained from Vicky Risley, 555A Round Rock West Drive, Round Rock, Texas 78681, (512) 244–8335. TRD-9714743.

Deep East Texas Chief Elected Officials, met at the Alabama-Coushatta Indian Reservation, Livingston, November 20, 1997 at 10:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar, Jasper, Texas 75951, (409) 384–5704. TRD-9714781.

Education Service Center, Region One, Board of Directors, met at 1900 West Schunior, Edinburg, November 11, 1997 at 5:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (210) 383–5611. TRD-9714770.

Education Service Center, Region One ESC Board of Directors, met at 1900 West Schunior, Edinburg, November 11, 1997, 7:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (210) 383–5611. TRD-9714769.

Grand Parkway Association, Board of Directors, met at 4544 Post Oak Place, Suite 222, Houston, November 13, 1997 at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, (713) 965–0871. TRD-9714720.

Grayson Appraisal District, Appraisal Review Board, met at 205 North Travis, Sherman, November 20, 1997 at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893–9673. TRD-9714773.

Gulf Bend Center, Mid-Coast Community Management, met at 1502 East Airline, Victoria, November 19, 1997 at Noon. Information may be obtained from Janet Waters, Gulf Bend Center, Victoria, Texas, 77901, (512) 575–0611. TRD-9714723.

Hansford County Appraisal District, Board of Directors, met at 709 West Seventh Street, Spearman, November 10, 1997 at 9:00 a.m. Information may be obtained from Alice Peddy, 709 West 7th Street, Spearman, Texas 79081, (806) 659–5575. TRD-9714783.

Jim Wells County Soil and Water Conservation District Board 355, met at 2287 North Texas Boulevard, #5, Alice, November 12, 1997, at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 2287 North Texas Boulevard, Alice, Texas (512) 668–8363. TRD-9714753.

Lometa Rural Water Supply Corporation, Board of Directors, met at 506 West Main Street, Lometa, November 10, 1997, at 7:00 p.m. Information may be obtained from Levi G. Cash, III, or Tina Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752–3505. TRD-9714776.

Nortex Regional Planning Commission, Executive Committee, met at Galaxy Center, #2 North, Suite 200, 4309 Jacksboro Highway, Wichita Falls, November 20, 1997 at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307–5144, (940) 322–5281, fax: (940) 322–6743. TRD-9714818.

Texas Municipal Power Agency ("TMPA") Board of Directors Annual Retreat, met at Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 miles North of Carlos Texas on FM 244, Carlos, November 12, 1997 at Noon. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873–1131. TRD-9714778.

Texas Municipal Power Agency ("TMPA") Audit and Budget Committee, met at Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 miles North of Carlos Texas on FM 244, Carlos, November 13, 1997 at 8:00 a.m.. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873–1131. TRD-9714779.

Texas Municipal Power Agency ("TMPA") Audit and Budget Committee, met at Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 miles North of Carlos Texas on FM 244, Carlos, November 13, 1997 at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873–1131. TRD-9714780.

Meetings filed November 7, 1997

Aqua Water Supply Corporation, Board of Directors, met at 1028 Main Street, Cecil B. Long Community Room, First National Bank of Bastrop, Bastrop, November 10, 1997 at 7:00 p.m. Information my be obtained from Carol Ducloux, Drawer P, Bastrop, Texas 78602, (512) 303–3943. TRD-9714822.

Archer County Appraisal District, Board of Directors, met at 101 South Center, Archer City, November 12, 1997 at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (940) 574–2172. TRD-9714851.

Austin-Travis County MHMR Center, Human Resources Board Committee, met at 1700 South Lamar, Building One, Suite 102A, Austin, November 12, 1997 at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9714886.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors, met at 26 Highway 132, Natalia, November 10, 1997 at 2:00 p.m. Information may be obtained from J. W. Ward III, 226 Highway 132, Natalia, Texas 78059, (830) 665–2132. TRD-9714823

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors, met at 26 Highway 132, Natalia, November 13, 1997 at 6:00 p.m. Information may be obtained from J. W. Ward III, 226 Highway 132, Natalia, Texas 78059, (830) 665–2132. TRD-9714915

Coleman County Water Supply Corporation, Board of Directors, met at 214 Santa Anna Avenue, Coleman, November 12, 1997 at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (916) 625–2133, TRD-9714848.

Creedmoor Maha WSC 904, Board, met at 1699 Laws Road, Mustang Ridge, November 12, 1997, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 78610, (512) 243–2113. TRD-9714887.

Dallas Area Rapid Transit, Audit Committee, met at 1401 Pacific Avenue, Conference Room "B", First Floor, Dallas, November 11, 1997 at 11:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas, 75202, (214) 749–3256. TRD-9714901.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue, Conference Room "C", First Floor, Dallas, November 11, 1997 at 1:00 p.m. Information may be obtained from Paula

Bailey, DART, P.O. Box 660163, Dallas, Texas, 75202, (214) 749–3256. TRD-9714899.

Dallas Area Rapid Transit, Board of Directors, met at 1401 Pacific Avenue, Board Room , First Floor, Dallas, November 11, 1997, at 6:30 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas, 75202, (214) 749–3651. TRD-9714900.

Denton Central Appraisal District, Appraisal Review Board, met at 3911 Morse Street, Denton, November 19, 1997 at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76208, (940) 566–0904. TRD-9714885.

Edwards Aquifer Authority, Finance Committee, met at 1615 North St. Marys Street, San Antonio, November 12, 1997 at 4:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9714931.

Edwards Aquifer Authority, Finance Committee, met at 1615 North St. Marys Street, San Antonio, November 12, 1997 at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9714847.

El Oso Water Supply Corporation, Board of Directors, met at FM 99, Karnes City, November 11, 1997 at 7:00 p.m. Information may be obtained from Judith Zimmerman, P.O. Box 309, Karnes City, Texas, 78118, (830) 780–3539. TRD-9714821.

Harris County Appraisal District, Appraisal Review Board, met at 2800 North Loop West, 8th Floor, Houston, November 14, 1997 at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, (713) 957–5222. TRD-9714826.

Hickory Underground Water Conservation District Number One, Board and Advisors, met at 100 Congress Avenue, Suite 1100, Austin, November 12, 1997 at 11:30 a.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597–2785. TRD-9714888.

Hunt County Appraisal District, Board of Directors, met at 4801 King Street, Greenville, November 13, 1997 at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (903) 454–3510. TRD-9714825.

Jones County Appraisal District, Board of Directors, met at 1137 East Court Plaza, Anson, November 20, 1997 at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823–2422. TRD-9714908.

24th Judicial District Community Supervision and Corrections Department, Victoria Area Board of District Judges, met at 135th District Courtroom, Third Floor, Victoria County Courthouse, 115 North Bridge Street, Victoria, November 12, 1997 at 4:30 p.m. Information may be obtained from Terre Henson Davidson, P.O. Box 165, Victoria, Texas 77902, (512) 575–0201. TRD-9714884.

Lower Colorado River Authority, Planning and Public Policy Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, November 11, 1997 at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473–3304. TRD-9714904.

Lubbock Regional MHMR Center, Board of Trustees, met at 1602 10th Street, Board Room, Lubbock, November 13, 1997 at 4:00 p.m. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806)766–0202. TRD-9714830.

Manville Water Supply Corporation, Board, met at 108 North Commerce Street, Coupland, November 13, 1997 at 7:00 p.m. Information may be obtained from Tony Graf, 108 North Commerce Street, Coupland, Texas 78615, (512) 272–4044. TRD-9714894.

North Texas Tollway Authority, Board of Directors, met at Arlington Marriott Hotel, 1500 Convention Center Drive, Arlington, November 12, 1997 at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522–6200. TRD-9714827.

North Texas Tollway Authority, Board of Directors, met with revised agenda, at Arlington Marriott Hotel, 1500 Convention Center Drive, Arlington, November 12, 1997 at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522–6200. TRD-9714914.

Panhandle Information Network Executive Committee, met at 415 West 8th Street, Amarillo, November 12, 1997 at 1:30 p.m. Information may be obtained from Linda Pitner, WTAMU Box 215, Canyon, Texas 79016–0001, (906) 656–2983. TRD-9714898.

Texas Political Subdivisions Joint Self-Insurance Funds, Board of Trustees, met at 12720 Hillcrest Road, #1010, Dallas, November 13–15, 1997, at 1:30 p.m., 8:30 a.m., and 8:30 a.m. respectively. Information may be obtained from Paul Clayton, P.O. Box 803356, Dallas, Texas 75380, (972) 392–9430. TRD-9714889.

Wood County Appraisal District, Board of Directors, met at 210 Clark Street, Quitman, November 13, 1997 at 9:00 a.m. Information may be obtained from W. Carson Wages or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783–0518, (903) 763–4891. TRD-9714849.

Meetings filed November 10, 1997

Brazos Valley Council of Governments, Board of Directors, met at 1706 East 29th Street, Bryan, November 12, 1997, at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805–4128, (409) 775–4244. TRD-9714987.

Canyon Regional Water Authority, Regular Board Meeting, met at Green Valley Special Utility District, 529 South Center Street, Marion, November 17, 1997 at 10:00 a.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass, New Braunfels, Texas 78130–8233, (210) 609–0543. TRD-9715004.

Central Texas Council of Governments, met at Copperas Cove Golf Course Copper Club House, Copperas Cove, November 20, 1997 at 10:00 a.m. Information may be obtained from Jennifer Lawyer, P.O. Box 729, Belton, Texas 76513, (254) 933–7075, ext. 208. TRD-9714988.

Dewitt County Appraisal District, Board of Directors, met at 103 Bailey Street, Cuero, November 18, 1997 at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275–5753. TRD-9715007.

District Judge's Meeting — 36th, 156th and 343rd District Courts, met at 400 West Sinton Street, Room 207, Sinton, November 14, 1997 at 2:30 p.m. Information may be obtained from Joel B. Johnson, 400 West Sinton Street, Room 207, Sinton, Texas 78387, (512) 364–6262. TRD-9715040.

Henderson County Appraisal District, Board of Directors, met at 1751 Enterprise Street, Athens, November 13, 1997 at 5:30 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675–9296. TRD-9715062.

Houston-Galveston Area Council, Projects Review Committee, met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston,

November 18, 1997 at 9:00 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627–3200. TRD-9715012.

Houston-Galveston Area Council, Board of Directors, met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, November 18, 1997 at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, (713) 627–3200. TRD-9715080.

Hunt County Appraisal District, Appraisal Review Board, met at 4801 King Street, Greenville, November 19, 1997 at 8:45 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454–3510. TRD-9715015.

Liberty County Central Appraisal District, Appraisal Review Board, met at 315 Main Street, Liberty, November 19, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336–5722. TRD-9715006.

Liberty County Central Appraisal District, Board of Directors, met at 315 Main Street, Liberty, November 20, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336–5722. TRD-9715005.

Mills County Appraisal District, Board of Directors, met at Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, November 18, 1997 at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76884, (915) 648–2253. TRD-9715052.

San Antonio River Authority, Board of Directors, met at 100 East Guenther Street, Boardroom, San Antonio, November 19, 1997 at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283–0027, (210) 227–1373. TRD-9714998.

South Texas Workforce Development Board, met at 901 Kennedy Street, Zapata, November 20, 1997 at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044–1757, (210) 722–0546. TRD-9715081.

Sulphur-Cypress SWCD #419, met at 1809 West Ferguson, Mt. Pleasant, November 13, 1997 at 9:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson Road, Suite D, Mt. Pleasant, Texas 75445, (903) 572–5411. TRD-9714980.

Toledo Bend Project Joint Operating Board, met at Texas Damsite Office, Route 1, Burkeville, November 17, 1997 at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746–3200. TRD-9715054.

West Central Texas Workforce Development Board, met at 1025 EN 10th Street, Abilene, November 19, 1997 at 10:30 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672–8544. TRD-9715071.

Meetings filed November 12, 1997

Austin-Travis County MHMR Center, Public Relations Committee, met in emergency session, at 1430 Collier Street, Board Room, Austin, November 13, 1997 at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9715094.

Bexar-Medina-Atascosa Counties Water Control and Improvement District One, Board of Directors, met at 226 Highway 132, Natalia, November 17, 1997 at 9:30 a.m. Information may be obtained from John W. Ward III, 226 Highway 132, Natalia, Texas 78059, (830) 665–2132. TRD-9715087.

Brazos Valley Workforce Development Board, met at 1905 South Texas Avenue, November 14, 1997 at 10:00 a.m. Information may be obtained from Fred Jackson, 1700 Independence Avenue, Bryan, Texas 77803, (409) 779–7622, ext. 115, (409) 775–0759. TRD-9715100.

Burke Center, Board of Trustees, will meet at 4101 South Medford Drive, Lufkin, November 24, 1997 at 1:00 p.m. Information may be obtained from Debra Fox, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639–1141. TRD-9715164.

Dallas Central Appraisal District, Appraisal Review Board, met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, November 20, 1997, 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631–0520. TRD-9715088.

Dewitt County Appraisal District, Board of Directors, met at 103 Bailey Street, Cuero, November 18, 1997 at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275–5753. TRD-9715181.

Education Service Center, Region VIII, Board of Directors, will meet at Alps Restaurant, 106 East Burton Road, Mt. Pleasant, November 25, 1997 at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456, (903) 572–8551. TRD-9715128.

Harris County Appraisal District, Board of Directors, met at 2800 North Loop West, 8th Floor, Houston, November 19, 1997 at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292–0975, (713) 957–5291. TRD-9715093.

Johnson County Central Appraisal District, Board of Directors, met at 109 North Main, Suite 201, Room 202, Cleburne, at 4:30 p.m. Information may be obtained from Don Gilmore, 109 N. Main, Cleburne, Texas 76031, (817) 558–8100. TRD-9715095.

Lampasas County Appraisal District, Appraisal Review Board, met at 109 East Fifth Street, Lampasas, November 17, 1997 at 9:00 a.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556–8058. TRD-9715097.

Limestone County Appraisal District, Board of Directors, met at 200 West State Street, Groesbeck, November 18, 1997 at 1:30 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (254) 729–3009. TRD-9715161.

Sabine Valley Center, Personnel Committee, met at 107 Woodbine Place, Judson Road, Longview, November 20, 1997 at 6:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (903) 237–2362. TRD-9715091.

Sabine Valley Center, Care and Treatment Committee, met at 107 Woodbine Place, Judson Road, Longview, November 20, 1997 at 6:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (903) 237–2362. TRD-9715090.

Sabine Valley Center, Finance Committee, met at 107 Woodbine Place, Judson Road, Longview, November 20, 1997 at 6:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (903) 237–2362. TRD-9715089.

Sabine Valley Center, Board of Trustees, met at 107 Woodbine Place, Judson Road, Longview, November 20, 1997 at 7:00 p.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (9030 237–2362. TRD-9715092.

Texas Water Conservation Association Risk Management Fund, Board of Trustees Meeting Strategic Planning, met at Tapatio Springs Conference Center and Resort, Cypress Room, Boerne, November 20–21, 1997 at 8:00 a.m. each day. Information may be obtained from Leroy Goodson, 221 East 9th Street, Suite 206, Austin, Texas 78701, (512) 472–7216. TRD-9715086.

Wise County Appraisal District, Board of Directors, met at 206 South State Street, Decatur, November 18, 1997 at 7:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (940) 627–3081. TRD-9715102.

Upper Leon River Municipal Water District, Board of Directors, met at General Office, located off FM 2861, Lake Proctor Dam, Comanche, November 17, 1997, 6:30 p.m. Information may be obtained from Upper Leon River MWD, P.O. Box 67, Comanche, Texas 76442, (254) 879–2258. TRD-9715096.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearing

The Texas Department of Agriculture (the department) will hold a public hearing to take public comment on new §3.110, concerning the designation by rule of the new Southern High Plains Boll Weevil Eradication Zone, as published in the November 14, 1997, issue of the *Texas Register*. The hearing will be held on Thursday, December 11, 1997, beginning at 2:30 p.m., at the Seagraves Community Center, 512 14th Street, Seagraves, Texas.

For more information, please contact Katie Dickie Stavinoha, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-7593.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714820
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: November 7, 1997

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Children's Trust Fund of Texas Council

Consultant Proposal Request

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254, Subchapter B.

PURPOSE

The Children's Trust Fund of Texas Council (CTF) seeks written proposals from qualified individuals or organizations to identify and prioritize the unmet needs of parents with children birth to age four years in seven Texas areas. The seven areas include the counties of El Paso, Webb Potter/Randall, Gregg, Travis, Jefferson, and the city of East Dallas. The contractor will develop and initiate a process to identify the unmet needs from both the parents perspective and service provider perspective, involve participants in prioritizing the unmet family needs in each community, and develop a comprehensive report. The proposal will include the methods to be used, a timeline, and the process to ensure broad representation by parents and local service providers of family resource programs, respite care, homeless programs, child abuse and neglect prevention activities, and other family resource services. The final report will provide the methodology used to identify the unmet needs and the process to prioritize those needs, as well as participant characteristics. CTF will review a draft copy of the report to be submitted by July 15. The final report must be completed prior to September 1, 1998.

METHOD OF PAYMENT

a. This is a cost-reimbursement contract.

b. An original invoice will be submitted by Contractor on a monthly basis, unless another option has been approved by CTF, and must be received in the CTF office by the 15th day following the last day of the month in which the services were provided. The invoice should include: an invoice number, the dates covered by the invoice, the hours expended and a summary of the work performed. Normal payment will be made to Contractor within 30 days after receipt of properly prepared invoices. Payment will not be made for any services performed prior to the effective date of this contract.

CONTRACTOR'S OBLIGATION

Contractor shall:

1. Provide the services and/or deliverables in accordance with the work statement and budget

2. Allow CTF, or its designees to monitor same. Some possible methods of monitoring may include on-site visits, document review, and interviews.

3. Not transfer or assign the contract without the prior written consent of CTF.

4. Adhere to General Conditions and Assurances in the contract.

5. Pay all payroll taxes, withholdings, and worker's compensation due to or for contractor's employees.

6. Serve as an independent contractor. Neither Contractor or Contractor's employees, subcontractors, or agents are or shall be deemed for any purpose to be employees of CTF or the State of Texas. CTF and the State of Texas shall not be responsible to Contractor, Contractor's employees, any governing body, or governmental entity for any payroll-related taxes or insurance related to the performance of the Services. Contractor hereby agrees to indemnify and hold CTF and the State of Texas harmless from any claims by Contractor's

employees, subcontractors, or agents of any governing body, and by any governmental entity for any payroll-related taxes, payroll-related insurance, and for any and all fines and penalties assessed for non-payment thereof.

7. Process a Payee Identification Number (PIN) assigned by the Comptroller of Public Accounts. If Contractor does not have a PIN, a Texas Application for Payee Identification Number form will be required. This number is based upon Contractor's social security number or a federal tax identification number.

8. Not be a lobbyist required to register under Texas Government Code Annotated, Chapter 305 (Vernon 1997 Pamphlet).

GENERAL INSTRUCTIONS

Submit one copy of your proposal in a sealed envelope to: Children's Trust Fund of Texas Council, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, before 4:00 p.m. December 19, 1997. Proposals may be modified or withdrawn prior to the established due date.

DISCUSSIONS WITH OFFERERS AND AWARD

CTF reserves the right to conduct discussions with any or all offerers, or to make an award of a contract without such discussions based only on evaluation of the written proposals.

EVALUATION

A. Organizations will be evaluated on time and quality of experience in like services. Equal consideration will be given to past performance, writing skills, and the effectiveness of the methodology to be used.

B. Your proposal should include costs for all related expenses.

TERMINATION

This Request for Proposal (RFP) in no manner obligates CTF to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of CTF and may be terminated without penalty or obligation at any time prior to the signing of a contract. CTF reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

OTHER

Similar services were conducted by the Intercultural Development Research Association (IDRA) and it is the intent of the Children's Trust Fund of Texas Council to award the contract to IDRA unless a better proposal is received.

The term of the contract is to be from date of award until September 30, 1998.

The services to be provided under the contract are necessary to establish community priorities for the Children's Trust Fund for child abuse and neglect prevention programming.

The Children's Trust Fund lacks sufficient personnel to perform the contract services by September 30, 1998.

The Children's Trust Fund is unaware of another state agency with which it could contract to perform these services.

Further technical information can be obtained from Sarah Winkler at 512/458-1281. Interested parties are invested to express their interest and describe their capabilities by December 19, 1997. Deadline for receipt of proposals is 4:00 p.m. on December 19, 1997. Date and time will be stamped on the proposal. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

Issued in Austin, Texas, on November 5, 1997.

TRD-9715463
Janie D. Fields, MPA
Executive Director
Children's Trust Fund of Texas Council
Filed: November 17, 1997

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of November 4, 1997, through November 10, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: Texas Eastern Transmission Corporation; Location: Line 16-Z, within Texas Eastern's permanent existing pipeline right-of-way and access road, Matagorda County, Texas; Project Number: 97-0387-F1; Description of Proposed Action: The applicant proposes to abandon 2,700 feet of four-inch Line 16-Z. Each of the two tie-ins will be excavated within the existing right-of-way. The above ground piping will be cut and removed. The pipeline will be capped and filled with 50 psig of nitrogen and reburied in place. Preconstruction contours will be restored and each location reseeded and stabilized.

Applicant: Texas Eastern Transmission Corporation; Location: Line 16-U, within Texas Eastern's permanent existing pipeline right-of-way and access road, San Patricio County, Texas; Project Number: 97-0388-F1; Description of Proposed Action: The applicant proposes to abandon 15,100 feet of four-inch Line 16-U. Each of the two tie-ins will be excavated within the existing right-of-way. The above ground piping will be cut and removed. The pipeline will be capped and filled with 50 psig of nitrogen and reburied in place. Preconstruction contours will be restored and each location reseeded and stabilized.

Applicant: National Marine Fisheries Service; Location: Mid-Atlantic and Northeast segments of the Atlantic ocean; Project Number: 97-0390-F1; Description of Proposed Action: The applicant proposes to close the Mid-Atlantic and Northeast segments of the Atlantic drift gillnet fisheries for swordfish, tuna, and shark from November 27, 1997 through July 31, 1998, to avoid jeopardy to the continued existence of the northern right whale.

Applicant: U.S. Fish and Wildlife Service; Location: Texas Chenier Plain, within the upper reaches of the Texas coast; Project Number: 97-0391-F1; Description of Proposed Action: The applicant proposes to establish land protection actions within designated Important Habitat Areas in the Texas Chenier Plain. These actions are designed to protect migratory birds and their habitat, declining wetland types, and unique community types in the area. As proposed, lands would be protected through a variety of available programs and options, including fee-title and conservation easement acquisition by the Fish and Wildlife Service. The above actions are being addressed in a Land Protection Compliance Document currently under preparation

and schedule for release to the public in draft by early December 1997, and to be finalized in early January, 1998.

Applicant: Kenneth Pfaff; Location: Carancahua Bay, approximately 14 miles east of Port Lavaca, at 850 Bayshore Drive, Jackson County, Texas; Project Number: 97-0393-F1; Description of Proposed Action: The applicant proposes to excavate a 25-foot by 200-foot canal through wetlands and construct a 4-foot by 200-foot walkway along the southern edge of the canal. The canal would be 4-feet deep and would include a 35-foot by 25-foot turnaround area on the landward end; Type of Application: U.S.C.O.E. permit application #21048 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Texas Meridian Resources Exploration, Inc.; Location: East Galveston Bay, in State Tracts 175A, 179A, and 180A, Galveston County, Texas; Project Number: 97-0395 -F1; Description of Proposed Action: The applicant requests an extension of time for an oil field development permit and to amend the permit to allow placement of shell fill material at drill sites. A maximum amount of approximately 5000 cubic yards of shell per site will be placed on the bay bottom, as needed, to construct drilling pads for rig stabilization. Maximum dimensions of individual shell pads will be 250-feet long by 90-feet wide by 6-feet deep. No dredging will be necessary; Type of Application: U.S.C.O.E. permit application #20104 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Alamo Concrete Products, Ltd.; Location: Redfish Bay, at the end of Sunray Road, in Ingleside, San Patricio County, Texas; Project Number: 97-0396-F1; Description of Proposed Action: The applicant proposes to complete a bulkhead with backfill and conduct maintenance dredging in an existing basin to previously authorized depths. The basin had been dredged but the bulkhead had not been constructed when the permit expired on 12-31-87. The applicant seeks authorization to conduct maintenance dredging for a period of 10 years; Type of Application: U.S.C.O.E. permit application #12779(04) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Petro-Guard Company, Inc.; Location: State Tracts 210, 215, 216, and 223 Expiritu Santo Bay and Pringle Lake, Calhoun County, Texas; Project Number: 97-0385-F1; Description of Proposed Action: The applicant requests an extension of time for the permit to conduct mineral development in State Tracts 210, 215, 216, and 223. In addition, the applicant requests an amendment to the permit to add the following state tracts to the permit area: 202, 203, 204, 205, S/2 of 209, 211, 212, 213, 214, S/2 of 217, and N/2 of 227, Espiritu Santo Bay, and Pringle Lake, Calhoun County; Type of Application: U.S.C.O.E. permit application #11006(09) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

FEDERAL AGENCY ACTIVITIES:

Applicant: U. S. Department of the Navy; Project Number: 97-0389-F2; Description of Proposed Activity: The applicant proposes to implement enhanced maintenance activities in support of the Integrated Maintenance Program (IMP) at Naval Air Station (NAS) Kingsville, Texas for T-45 trainer aircraft.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715160
Garry Mauro
Chairman
Coastal Coordination Council
Filed: November 12, 1997

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/17/97 - 11/23/97 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/17/97 - 11/23/97 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715186
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 12, 1997

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Texas Department of Criminal Justice

Request for Offer

The Texas Department of Criminal Justice (TDCJ) Request for Offer (RFO) is to solicit offers for Business Process Reengineering services in support of the second phase of the Texas Department of Criminal Justice Offender Information Management (OIM) Business Process Reengineering (BPR) project. Respondents must respond with an offer for services to commence in January 1998, and be a certified QISV vendor at the completion of contract negotiations.

To request a copy of the RFO with attachments, contact Lynn Ayala: Address: P.O. Box 4016, Huntsville, Texas 77342-4016, Phone: (409) 437-1193, Fax: (409) 437-1011.

Closing date: 2:00 p.m., December 10, 1997.

TDCJ reserves the right to reject any and all responses submitted and to accept the offer that is considered to be in the best interest of TDCJ. TDCJ may request additional information as necessary, to clarify, explain, and verify any aspect of an offer. TDCJ shall be the sole judge of the acceptability of any offer.

Issued in Huntsville, Texas, on November 12, 1997.

TRD-9715101

Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: November 12, 1997

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General Services Commission

Notice of Request for Offers

Notice is hereby given to all interested parties that pursuant to Texas Government Code, Title 10, Subtitle D, Chapter 2166, the General Services Commission on behalf of the Department of Public Safety, is soliciting proposals for the potential purchase of raw land in a northwest segment of Harris County, Texas (details in RFO) of at least 15 acres or a minimum of 653,400 square feet of contiguous land. The commission will evaluate the proposals in accordance with the criteria outlined in a Request for Offers. The Request for Offers containing all the requirements necessary for an appropriate response may be obtained on and after November 12, 1997, from Steve Huber at (512) 475-2379.

All responses must be received in a sealed envelope no later than 3:00 p.m., Central Standard Time, on December 12, 1997, at the following address: General Services Commission, Central Services Building, 1711 San Jacinto Boulevard, P.O. Box 13047, Austin, Texas 78711-3047, Attention: Bid Room (Room 180).

Issued in Austin, Texas, on November 6, 1997.

TRD-9714757
Judy Ponder
General Counsel
General Services Commission
Filed: November 6, 1997

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Texas Department of Health

Extension of Deadline for Receipt of Proposals for Shots Across Texas/African American Immunization Grassroots Coalition Development

A notice of request for proposals for Shots Across Texas/African American Immunization Grassroots Coalition Development was published in the October 24, 1997, issue of the Texas Register (22 TexReg 10552) to maintain, establish, and develop grass roots local immunization coalitions to promote and ensure the timely and appropriate immunization of children two years and younger.

The deadline for receipt of these proposals has been extended from December 1, 1997, until December 15, 1997, 5:00 p.m., to be submitted to the Texas Department of Health, Immunization Division, Tower Building, Room T-310, 1100 West 49th Street, Austin, Texas 78756, attention: Jan Warfield. Proposals received after this deadline, or via fax transmission, will not be accepted.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714796
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 6, 1997

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Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled “Location” indicates the city in which the radioactive material may be possessed and/or used. The location listing “Throughout Texas” indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

[graphic]

[graphic]

[graphic]

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested

in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756–3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on November 6,, 1997.

TRD-9714746
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 6, 1997

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Student Plans, Inc., a foreign third party administrator. The home office is Naperville, Illinois.

Application for incorporation in Texas of Wisenberg, Pozmantier & Co., Inc. (doing business under the assumed name of Wisenberg Insurance + Risk Management), a domestic third party administrator. The home office is Houston, Texas.

Application for admission to Texas of Partners for Women's Health Care, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Application for admission to Texas of Fem Partners, Inc. a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715187
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 12, 1997

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Texas Lottery Commission

Request for Proposals

The Texas Lottery is issuing a Request for Proposals ("RFP") entitled Texas Lottery Prize Vehicle Package. The purpose of this RFP is to obtain Proposals to furnish pick-up trucks as a part of the prize structure for an instant ticket lottery game anticipated to be offered in the Spring of 1998 for the Texas Lottery Commission ("Texas Lottery") as provided in this RFP.

It is the intent of the Texas Lottery to obtain the services of a qualified manufacturer of full size pick-up trucks to furnish limited edition, customized pick-up trucks as well as a cooperative advertising and promotional campaign on behalf of a Texas Lottery instant ticket game.

Proposers responding to this RFP are expected to provide the Texas Lottery with information and evidence that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

Schedule of Events

The time schedule for awarding a contract under this RFP is listed as follows. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all potential proposers will be notified.

Issuance of RFP, November 21, 1997

Letter of Intent Due, December 12, 1997

Written Questions Due, December 19, 1997

Responses to Written Questions Issued, January 5, 1998

Proposals Due, January 23, 1998

Announcement of Apparent Successful Proponent, January 30, 1998 (or as soon as possible thereafter)

To obtain a copy of the RFP, please contact: Colette Davis Pena, Assistant General Counsel, Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630, (512) 344-5123 or by Fax (512) 344-5189.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715084
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: November 10, 1997

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Texas Natural Resource Conservation Commission

Notices of Applications for Waste Disposal/Discharge Permits

Notices of Applications for waste disposal/discharge permits issued during the period of November 3rd through November 7, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application-new permit, amendment, or renewal and permit number.

CITY OF COLUMBUS, P.O. Box 87, Columbus, Texas 78934; the Columbus Industrial Park Wastewater Treatment Facilities will be located approximately 1000 feet south and 2000 feet west of the intersection of State Highway 71 and the Colorado River in Colorado County, Texas; new; Permit Number 10025-002.

DISPOSAL SYSTEMS, INC., P.O. Box 1914, Houston, Texas 77536; a RCRA permitted treatment storage, and disposal facility which also conducts organic chemical recycling operations; the plant site is located at 2525 Battleground Road, adjacent to the west side of State Highway 134 approximately two miles north of the intersection of State Highway 134 and State Highway 225 in the City of Deer Park, Harris County, Texas; new; Permit Number 03937.

CITY OF LUFKIN, P.O. Drawer 190, Lufkin, Texas 75901; the Hurricane Creek Wastewater Treatment Facilities are located approximately 1,600 feet northwest of the point where Hurricane Creek intersects Farm-to-Market Road 324 and south of the City of Lufkin in Angelina County, Texas; amendment; Permit Number 10214-001.

CITY OF POTTSBORO, P.O. Box 1099, Pottsboro, Texas 75076; the wastewater treatment plant is located on County Line Road at Little Mineral Creek, approximately 1.6 miles north of the intersection of Farm-to-Market Road 120 and Farm-to-Market Road 996 and approximately 0.5 mile east of Farm-to-Market Road 120 in Grayson County, Texas; amendment; Permit Number 10591-001.

CITY OF SEADRIFT, P.O. Box 159, Seadrift, Texas 77983; a municipal water treatment plant with reverse osmosis water purification system; the plant site is located approximately 300 feet east of the intersection of Dallas Avenue and Main Street, on the north side of Dallas Avenue in the City of Seadrift, Calhoun County, Texas; new; Permit Number 03954.

CITY OF SPRINGLAKE, P.O. Box 249, Springlake, Texas 79082; the wastewater treatment facilities and disposal site are located approximately 1000 feet south of U.S. Highway 70 and approximately 0.5 mile west of the City of Springlake in Lamb County, Texas; amendment; Permit Number 11016-001.

TRIANGLE PACIFIC CORPORATION, 1100 Cottonford Road, Center, Texas 75935; a laminated hardwood processing plant; the plant site is located at 1100 Cottonform Road in the City of Center, Shelby County, Texas; new; 03950.

QUALITECH STEEL CORPORATION, 200 Marvin L. Berry Road, Corpus Christi, Texas 78409; an iron carbide production plant, the plant site is located approximately 1.5 miles southeast of the intersection of Suntide Road and Missouri-Pacific Railroad between Viola Channel and the Missouri-Pacific Railroad tracks northwest of the Tule Lake Turning Basin, Nueces County, Texas; new; Permit Number 03948.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715038
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: November 10, 1997

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Notice of Public Hearing (General Operating Permits)

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 122.

The commission proposes new §122.516, concerning the requirements for a site-wide general operating permit. The proposed new section will provide a simplified alternate permitting mechanism for compliance with the operating permit program mandated by Title V of the Federal Clean Air Act Amendments of 1990. Title 40 Code of Federal Regulations, Part 70 (40 CFR 70) allows general permits as an alternate mechanism for numerous similar sources that are subject to Title V. Chapter 122 was promulgated in response to 40 CFR 70 and also allows this alternate mechanism.

A public hearing on the proposal will be held December 18, 1997, at 10:00 a.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97176-122-AI. Comments must be received by 5:00 p.m., December 22, 1997. For further information or questions concerning this proposal, please contact Bruce McFarland of the Operating Permits Division, Office of Air Quality, (512) 239-1132.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should

contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714813
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: November 6, 1997

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Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued during the period of November 7, 1997.

Application Number TA-7898 by Amarillo Road Company for diversion of 10 acre-feet in a one-year period for industrial (roadway construction) use. Water may be diverted from Sand Creek, Brazos River Basin, approximately 18 miles southeast of Post, Garza County, Texas at the crossing of U.S. Hwy 84 and Sand Creek.

Application Number TA-7899 by Mitchell Energy Corporation for diversion of 2 acre-feet in a six-month period for mining (oil and gas well drilling) use. Water may be diverted from Oliver Creek, Trinity River Basin, approximately 16 miles southwest of Denton, Denton County, Texas and south of FM 1384.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715037
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: November 10, 1997

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 6, 1997, Max-Tel Communications, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60086. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of Max-Tel Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18103.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than November 26, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18103.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714890
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 1997

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NOTICES OF APPLICATION FOR SERVICE PROVIDER CERTIFICATE OF OPERATING AUTHORITY

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 6, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TCI Telephone Services of Texas, Inc., d/b/a People Link by TCI for a Service Provider Certificate of Operating Authority, Docket Number 18309 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange and access services including vertical features, basic and primary ISDN, and a variety of local telecommunications services.

Applicant's requested SPCOA geographic area includes the geographic regions currently served by the following incumbent local exchange companies: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company, United Telephone Company of Texas, Inc., Sugar Land Telephone Company, and Lufkin-Conroe Telephone Exchange, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than November 26, 1997. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715048
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 6, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Dobson Wireless, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 18292 before the Public Utility Commission of Texas.

Applicant intends to provide all forms of telecommunications services, including local exchange access services, local exchange usage services, switched access services, network services, operator assisted services, directory assistance, toll-free calling, dual party relay services, and access to 911 emergency services.

Applicant's requested SPCOA geographic area includes the entire area of the existing Southwestern Bell Telephone Company and GTE Southwest, Inc. exchanges in the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than November 26, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715049
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 1997

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NOTICES OF FILING OF TARIFF TO OFFER LIFELINE AND LINK UP AMERICA PROGRAMS

Notice is given to the public of the filing by Dell Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 4, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Dell Telephone Cooperative, Inc. to Revise General Exchange Tariff, Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18244.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715103
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by La Ward Telephone Exchange, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 4, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of La Ward Telephone Exchange, Inc. to Provide Two New Services, The Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18245.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to PUC Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715104
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Ganado Telephone Company, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 4, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Ganado Telephone Company, Inc. Requesting Approval to Provide Two New Services, The Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18246.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715105

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Lufkin-Conroe Telephone Exchange, Inc., with the Public Utility Commission of Texas (PUC) of a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Lufkin-Conroe Telephone Exchange, Inc. to Revise General Exchange Tariff; Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18257.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715106
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Kerrville Telephone Company, with the Public Utility Commission of Texas (PUC) a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Kerrville Telephone Company to Revise General Exchange Tariff, Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18260.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715107
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Texas Alltel, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Texas Alltel, Inc. to Revise General Exchange Tariff, Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18261.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715108
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Sugar Land Telephone Company with the Public Utility Commission of Texas (PUC) a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Sugar Land Telephone Company to Revise General Exchange Tariff, Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18262.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715109
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Coleman County Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Coleman County Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18282.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715110
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Community Telephone Company, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Community Telephone Company, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18283.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715111
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Central Texas Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Central Texas Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18284.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715112
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Electra Telephone Company with the Public Utility Commission of Texas (PUC) a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Electra Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18296.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715113
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Border to Border Communications, Inc. with the Public Utility Commission of Texas (PUC) a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Border to Border Communications, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18297.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715114
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by E.N.M.R. Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of E.N.M.R. Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18298.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715115
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Eastex Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Eastex Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18299.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715116
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Cumby Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Cumby Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18300.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715117
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Muenster Telephone Corporation of Texas, with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Muenster Telephone Corporation of Texas for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18304.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715118
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Mid-Plains Rural Telephone Cooperative, Inc., with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18305.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715119
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

♦ ♦ ♦

Notice is given to the public of the filing by Tatum Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Tatum Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18306.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715120
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Lipan Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Lipan Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18308.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715121
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Santa Rosa Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18311.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715122
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Peoples Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Peoples Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18312.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715123
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Wes-Tex Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Wes-Tex Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18313.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715124
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by North Texas Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of North Texas Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18314.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715125
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by South Plains Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of South Plains Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18315.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715126
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by West Plains Telecommunications, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of West Plains Telecommunications, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18316.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715127
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by XIT Rural Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of XIT Rural Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18317.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715129
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by West Texas Rural Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of West Texas Rural Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18318.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715130
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Brazos Telecommunications, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Brazos Telecommunications, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18319.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715131
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Blossom Telephone Company, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Blossom Telephone Company, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18320.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715132
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Brazos Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Brazos Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18321.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715133
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Cap Rock Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Cap Rock Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18301.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715134
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Big Bend Telephone Company, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Big Bend Telephone Company, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18302.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715135
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Comanche County Telephone Company, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Comanche County Telephone Company, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18303.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715136
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Five Area Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Five Area Telephone Cooperative, Inc. to Include Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18252.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715137
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Livingston Telephone Company, with the Public Utility Commission of Texas (PUC) of a tariff on November 5, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Livingston Telephone Company to Include Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18253.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715138
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Alenco Communications, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Alenco Communications, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18322.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715139
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Riviera Telephone Company, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 6, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Riviera Telephone Company, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18323.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715140
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Panhandle Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Panhandle Telephone Cooperative, Inc. for Approval of Lifeline Program and Link-Up America (LUA) Program; Tariff Control Number 18325.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715141
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Eaglenet, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Eaglenet, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18327.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715142
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Century Telephone of Northwest Louisiana, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Century Telephone of Northwest Louisiana, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18330.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715143
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Century Telephone of Lake Dallas, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Century Telephone of Lake Dallas, Inc. foe Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18331.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715144
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Century Telephone of Port Aransas, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Century Telephone of Port Aransas, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18332.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715145
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Century Telephone of San Marcos, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Century Telephone of San Marcos, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18333.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715146
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Taylor Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Taylor Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18334.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715147
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by ETEX Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of ETEX Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18335.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715148
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Fort Bend Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Fort Bend Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18336.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715149
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Cameron Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Cameron Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18337.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715150
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Cameron Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Cameron Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18337.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715151
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Guadalupe Valley Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18339.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715152
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Colorado Valley Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Colorado Valley Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18340.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715153
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Brazoria Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 10, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Brazoria Telephone Company to Revise General Exchange Tariff, Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18341.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715154
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Industry Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Industry Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18342.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715155
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Southwest Texas Telephone Company with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Southwest Texas Telephone Company for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18343.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715156
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Hill Country Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Hill Country Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18344.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715157
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Valley Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 7, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Valley Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18345.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715158
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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Notice is given to the public of the filing by Southwest Arkansas Telephone Cooperative, Inc. with the Public Utility Commission of Texas (PUC) of a tariff on November 10, 1997, seeking approval to offer Lifeline and Link Up America programs.

Application Title and Number: Application of Southwest Arkansas Telephone Cooperative, Inc. for Approval of Lifeline Program and Link Up America (LUA) Program; Tariff Control Number 18348.

Tariff Application: Lifeline is a program that offers discounted rates for local exchange service to certain customers who qualify on the basis of income and other criteria. Link Up America is a program that offers discounted rates for service connection to certain customers who qualify on the basis of income and other criteria.

The application will be processed administratively pursuant to Public Utility Commission Substantive Rule §23.26. Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 by December 1, 1997. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715159
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1997

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NOTICE OF JOINT AGREEMENT BETWEEN SOUTHWESTERN BELL TELEPHONE COMPANY,. ET. AL. TO PROVIDE EXTENDED AREA SERVICE FROM THE ROCKDALE EXCHANGE TO THE AUSTIN, TAYLOR, AND THORNDALE EXCHANGES

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint agreement on October 21, 1997, seeking approval of one-way, optional, extended area service (EAS) from the Rockdale exchange to the Austin, Taylor, and Thorndale exchanges, pursuant to Public Utility Commission Substantive Rule §23.49(b)(8).

Project Title and Number: Joint Agreement of Southwestern Bell Telephone Company, et. al. for the Provision of Extended Area Service (EAS) from the Rockdale Exchange to the Austin, Taylor, and Thorndale Exchanges; Project Number 18143.

The Joint Petition and Agreement: The proposed plan is an optional, one-way, service to which subscribing Southwestern Bell Telephone Company residence and business local exchange customers within the Rockdale exchange will be able to call all other telephone customers within the calling area for a monthly, flat rate.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to Public Utility Commission Substantive Rule §23.49(b)(8)(C). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Customer Protection Section at (512) 936-7120 by January 23, 1998. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715046
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 1997

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NOTICE OF INTENT TO FILE FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER UNDER 47 U.S.C. §214(e)

Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on November 10, 1997, an application for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Project Title and Number: General Counsel's Petition for Designation of Eligible Telecommunications Carriers Under 47 U.S.C. §214(e). Project Number 18100.

The Application: Designation as an eligible telecommunications carrier qualifies the designee to apply for federal universal service funds under 47 U.S.C. §254. Persons wishing to protest a requested carrier's designation must intervene by December 1, 1997, specifying the carrier whose request is being challenged and stating with particularity the grounds for such intervention.

The following telecommunications carriers have filed notice of intent to file an application for designation as an eligible telecommunications carrier: GTE Southwest Incorporated, Contel of Texas, Inc.; United Telephone Company of Texas, Inc. d/b/a Sprint; Central Telephone Company of Texas d/b/a Sprint; XIT Rural Telephone Cooperative, Inc.; West Texas Rural Telephone Cooperative, Inc.; South Plains Telephone Cooperative, Inc.; Santa Rosa Telephone Cooperative, Inc.; Peoples Telephone Cooperative, Inc.; Mid-Plains Rural Telephone Cooperative, Inc.; Five Area Telephone Cooperative, Inc.; West Plains Telecommunications, Inc.; Wes-Tex Telephone Cooperative, Inc.; North Texas Telephone Cooperative, Inc.; Panhandle Telephone Cooperative, Inc.; Riviera Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Tatum Telephone Company; Muenster Telephone Corp. of Texas; Livingston Telephone Company; Lipan Telephone Company; Electra Telephone Company; Eastex Telephone Cooperative, Inc.; E.N.M.R. Telephone Cooperative, Inc.; Cumby Telephone Cooperative, Inc.; Comanche County Telephone Company, Inc.; Cap Rock Telephone Cooperative, Inc.; Brazos Telephone Cooperative, Inc.; Brazos Telecommunications, Inc.; Blossom Telephone Company, Inc.; Big Bend Telephone Company, Inc.; Alenco Communications, Inc.; Border to Border Communications, Inc.; Southwest Texas Telephone Company; Fort Bend Telephone Company; Cameron Telephone Company; Brazoria Telephone Company; Kerrville Telephone Company; Century Telephone of Port Aransas, Inc.; Century Telephone of Lake Dallas, Inc.; Century Telephone of San Marcos, Inc.; Century Telephone of Northwest Louisiana, Inc.; Texas Alltel, Inc.; Lake Livingston Telephone Company, NRPT Communications, Inc.; Crawford Telephone Company; La Ward Telephone Exchange, Inc.; Dell Telephone Co-

operative, Inc.; Ganado Telephone Company, Inc.; Lufkin-Conroe Telephone Exchange, Inc.; Leaco Rural Telephone Cooperative, Inc.; Etex Telephone Cooperative, Inc.; Community Telephone Company; Colorado Valley Telephone Cooperative, Inc.; Coleman County Telephone Cooperative, Inc.; Central Texas Telephone Cooperative, Inc.; Hill Country Telephone Cooperative, Inc.; Poka Lambro Telephone Cooperative, Inc.; Taylor Telephone Cooperative, Inc.; Valley Telephone Cooperative, Inc.; Guadalupe Valley Telephone Cooperative, Inc.; Southwestern Bell Telephone Company; EagleNet, Inc.; Kingsgate Telephone, Inc.; and Sugar Land Telephone Company.

Persons with questions about this docket or who wish to comment on the applications should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for comment is December 1, 1997, and all correspondence should refer to Project Number 18100.

Issued in Austin, Texas, on November 10, 1997.

TRD-9715047
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 1997

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NOTICE SEEKING PUBLIC COMMENTS ON CHANGES TO THE ANNUAL EARNINGS REPORTS AND RELATED FILING REQUIREMENTS

The staff of the Public Utility Commission of Texas (PUC) is in the process of updating the annual Earnings Reports required under 16 Texas Administrative Code §23.11(o) and §23.12(b)(2). As such, the PUC staff is seeking public comment on improvements to the format and content of the Earnings Reports submitted by regulated utilities. The comments received pursuant to this notice will be considered by the PUC staff in developing a recommended list of changes to the Earnings Reports. Pursuant to 16 Texas Administrative Code §22.80, the list of changes recommended by the PUC staff will be published at a future date for purposes of inviting additional public comment. After this second round of public comment has been received, the PUC staff will make a final recommendation for consideration by the commission in open meeting. Any changes to the Earnings Reports would become effective beginning with the Earnings Reports for calendar year 1997 which are due to be filed in May 1998.

Persons wishing to comment should submit four copies of any written comments by Thursday, December 11, 1997. Written comments should make clear reference to Project Number 18277 (Revision of PUC Earnings Reports) and should be addressed to Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326.

In order to facilitate the review of public comments, the PUC staff would appreciate receiving comments which are responsive to the questions listed below. When preparing responses to these questions, it would be helpful if respondents would identify the specific benefits to be obtained from each suggested change in reporting requirements. (i.e., improvement in measuring jurisdictional utility earnings, reduction in the cost of report preparation, etc.) Respondents should also specify which Earnings Report is being addressed in the comments (Earnings Report for Electric Investor-Owned Utilities). Additional comments on other aspects of the PUC Earnings Reports and related filing requirements are also welcome.

Questions pertaining to the format and content of the PUC Earnings Reports:

(1) Which general questions (if any) should be modified or deleted, and how?

(2) What general questions (if any) should be added to the Earnings Reports?

(3) Which schedules (if any) should be modified or deleted, and how?

(4) What schedules (if any) should be added to the Earnings Reports?

(5) What changes (if any) need to be made to the instructions accompanying the Earnings Reports?

Issued in Austin, Texas, on November 10, 1997.

TRD-9715050
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 1997

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Notice of Workshop on the Billing of Unauthorized Telecommunications Charges to Texas Customers

The Public Utility Commission of Texas (PUC) will conduct a workshop concerning the billing of unauthorized telecommunications charges to Texas customers. The workshop will be held on Monday, November 24, 1997, at 1:30 p.m. in the commissioners' hearing room, Seventh floor of the William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

Each year, thousands of Texans are victimized by the deceptive practices of unscrupulous companies operating in the telecommunications market. Often, customers are billed by companies they have never heard of for services they have never received. Many of these unauthorized charges appear on the bills sent to customers by established local telephone service providers. The charges are often overlooked, or are paid by customers afraid of disconnection of their local service. The fraudulent practices succeed through the use of deceptive names for purported services, customer confusion, and the association with the bill of a major provider.

The PUC's Office of Customer Protection (OCP) is investigating unauthorized billing issues under Project Number 18307. The primary purpose of the November 24 workshop is to bring parties together to find ways to better prevent the appearance of unauthorized charges on customers' bills. The workshop will convene industry and consumer representatives for a discussion of the issues, and a review of possible solutions to this growing problem.

The workshop will include panel discussions featuring invited speakers. An agenda will be made available prior to the workshop, and will be posted on the PUC's internet site. Questions concerning the workshop should be directed to Bill Magness, Director of the Office of Customer Protection, at (512) 936-7145.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714891
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 1997

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Public Notice of Interconnection Agreement

On October 31, 1997, CSW/ICG ChoiceCom, L.P. and Southwestern Bell Telephone Company collectively referred to as applicants, filed a joint application for approval of resale agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, Regular Session Chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18205. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18205. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 15, 1997, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18205.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714787
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 1997

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On November 3, 1997, GTE Wireless and United Telephone Company of Texas, Inc., doing business as Sprint and Central Telephone Company of Texas doing business as Sprint, collectively referred to as applicants, filed a joint application for approval of resale agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 nited States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, Regular Session Chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18240. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18240. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 15, 1997, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18240.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714788
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 1997

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On November 4, 1997, Credit Loans, Inc., doing business as Lone Star Communications and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of resale agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public tility Regulatory Act, 75th Legislature, Regular Session Chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18250. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18250. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 15, 1997, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18250.

Issued in Austin, Texas, on November 6, 1997.

TRD-9714789
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 1997

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Texas Savings and Loan Department

Notice of Application for Remote Service Unit of a Savings Bank

Notice is hereby given that application has been filed with the Savings and Loan Commissioner of Texas by: First American Bank Texas, Bryan, Texas, for approval to establish and operate a remote service unit at the following location:

Address-2750 North Grandview, City-Gattiland Odessa, County-Ector;

The applicant savings bank asserts that: the security of the savings bank's funds and that of its account holders will be maintained and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within ten days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to rule 7 TAC §1575.37 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714745
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: November 6, 1997

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Notice is hereby given that application has been filed with the Savings and Loan Commissioner of Texas by: First American Bank Texas, Bryan, Texas, for approval to establish and operate a remote service unit at the following location: Address-Gattiland San Angelo, 4349 Sherwood Way; City-San Angelo; County-Tom Green.

The applicant savings bank asserts that: the security of the savings bank's funds and that of its account holders will be maintained and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within ten days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to rule 7 TAC §1575.37 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

Issued in Austin, Texas, on November 5, 1997.

TRD-9714744
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: November 6, 1997

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Sul Ross State University

Request for Proposals - Enrollment Management Audit

Sul Ross State University will undertake an enrollment management audit which will include a recruiting program audit, a competitive positioning review, an assessment of its image among a variety of constituencies in selected markets, a current program marketability audit that will focus on regional needs, and enrollment related market research. The University is committed to serving the needs of the citizens in this region through programs and activities designed to reach out to public school students, traditional college students, adult learners, and professionals needing continuing education opportunities. The University seeks assistance in the audit and in achieving four goals related to the future of the University and its educational and service mission. The goals are:

Goal 1 Analyze the institutional image and competitive positioning throughout its service region, including the Rio Grande College. The service region of the Alpine campus includes 18 counties in far West Texas. The Rio Grande College is an upper level/graduate college serving 13 counties in the Middle Rio Grande region of Texas. In addition, the University seeks to determine its image and market position in the major urban areas of San Antonio and El Paso.

Goal 2 Measure the demand throughout the service regions and the metropolitan areas of San Antonio and El Paso for specific programs and majors, including existing and potential programs.

Goal 3 Use the research findings to guide the institution in developing an institutional marketing plan.

Goal 4 Providing training and personal development for the University's professional staff in all areas of enrollment management. This is to include suggestions for immediate steps to enhance recruiting and collect data for the evaluation of existing strategies.

In addition, the University will seek assistance through a future RFP in the preparation of publications and media releases to enhance the institutional image in areas of recruiting and marketing. Sul Ross is the only regional comprehensive university in the vast border region between El Paso and San Antonio. The marketing plan will guide a publication strategy, utilizing some or all of newspapers, radio, television, magazines, and/or mail, to enhance the image and visibility of the University through its publications and recruiting literature in the specific target areas and markets. The publication plan will provide a unified image for the institution through all publications and other materials to be used in marketing and recruiting.

Proposals are to be received by January 9, 1998. They should be sent to Dr. R. Vic Morgan, President, Sul Ross State University, Alpine, Texas 79832.

The successful bidder will include information on working processes and the range of services to be provided. Biographical information on consultants assigned to this specific project will be important factors in the evaluation of proposals as will be samples of work performed for other similar clients. The costs for achieving each one of the Goals shall be broken down in the proposals with Goals 1 and 2 as one project and Goals 3 and 4 each separate.

Once proposals have been evaluated, a formal presentation on campus will be requested for the top two or three finalists.

An information packet containing a copy of the current university catalog, recruiting brochures, demographic information on the university's student population, etc., is available on request at the address listed previously. Additionally, questions and discussion may be directed at individuals on campus including the Dean of Admissions and Records, the Director of Student Financial Assistance/Recruiting, the Vice President for Academic and Student Affairs, and the President. The institutional phone number is (915) 837-8011.

Issued in Alpine, Texas, on November 12, 1997.

TRD-9715163
David C. Wilson
Purchasing Director
Sul Ross State University
Filed: November 12, 1997

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Request for Proposals - Federal Perkins Loan Program

Sul Ross State University will undertake a review and operational restructuring of the Federal Perkins Loan Program following Federal Guidelines to ensure the integrity and purpose of the student loan program. The University seeks a professional consultant to bring the Office of Financial Assistance and Recruiting into compliance with

Title IV requirements and perform sound management practices. In addition, Sul Ross State University seeks a consultant to assess and evaluate the operational and administrative practices of the Federal Perkins Loan Program currently managed by the Office of Financial Assistance and Recruiting. The goals are:

Goal 1 Review the current Perkins Loan Portfolio and determine the status of all loans currently outstanding. Conduct an individual review of all Perkins files and supporting documentation to identify the accuracy of the records.

Goal 2 Upon reviewing and updating files with regard to Goal 1, compare and update the information with ASFA records. All discrepancies should be followed up and appropriate actions taken on any Perkins Loans that are delinquent or in default.

Goal 3 Develop policies and procedures to ensure that the Federal Perkins Loans Program is operating in accordance with all regulatory requirements. This should include, but not be limited to, the development of proper procedures for awarding the funds, entrance and exit interviews, execution of Promissory Note with all supporting documents and timely reporting to AFSA and a selected Credit Bureau.

Goal 4 Review the current program awards, projected collections, administrative capabilities, institutional and collection efforts, and cost effectiveness of the program. Submit a final report to Sul Ross State University with a status update and appropriate recommendations as to what other action the institution may take to ensure that the Federal Perkins Loan program maintains compliance, can be fully utilized and managed, and any other recommendations supported by the consultant.

Proposals are to be received by January 9, 1998. They should be sent to Mr. Robert C. Cullins, Dean of Admissions and Records, Box C-2, Sul Ross State University, Alpine, Texas 79832.

The successful bidder will include information on working processes and the range of services to be provided. Biographical information on consultants assigned to this specific project will be an important factor in the evaluation of proposals as will samples of work performed for other similar clients.

Once proposals have been evaluated, a formal presentation on campus will be requested for the top two or three finalists.

An information packet containing a copy of the current university catalog, financial assistance brochures, and Federal Perkins Loan Program information is available on request at the address listed previously. Additionally, questions and discussion may be directed to individuals on campus including the Dean of Admissions and Records, the Vice President for Academic and Student Affairs, and the President. The institutional phone number is (915) 837-8011.

Issued in Alpine, Texas, on November 12, 1997.

TRD-9715162
David C. Wilson
Purchasing Director
Sul Ross State University
Filed: November 12, 1997

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Teacher Retirement System of Texas

Request for Bids

The Teacher Retirement System of Texas, under the authority granted it in Article 3.50-4, Insurance Code, is requesting bids for instituting and piloting Medicare Risk HMO(s) in the Dallas/Ft. Worth metropolitan area. For the purpose of this bid, the Dallas/Ft. Worth metropolitan area is defined as including Dallas, Tarrant, Collin, Denton, Johnson, Rockwall, Kaufman, Ellis, Hood, Parker, and Wise counties. The Teacher Retirement System will evaluate and select contractors to be offered alongside the current managed indemnity plans provided under the Texas Public School Employees Group Insurance Program (TRS-Care). This will be a pilot program and based on its success, TRS may wish to offer both Medicare Risk and non-Medicare Risk HMO option to participants living in other areas.

Copies of the Request for Bids may be obtained from: Frank J. DiLorenzo, Director of Group Health Benefits, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701-2698 (512) 397-6400. The deadline for responding to the Request for Bids is 5:00 p.m., January 15, 1998.

In evaluating the bids, TRS will consider cost, financial stability, quality of medical management, member services, plan stability, experience and ability to serve similar populations.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715177
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: November 12, 1997

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Texas Department of Transportation

Request for Proposal

Notice of Invitation: The Odessa District of the Texas Department of Transportation (TxDOT) intends to enter into a contract with a professional engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. A Prime Provider and any Subproviders proposed on the Team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s), unless the work category is a non-listed work category. To qualify for contract award, a selected prime engineer must perform a minimum of 30% of the actual contract work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees, needs to be aware of the revolving door laws, including Government Code, Chapter 572 and Section 52, Article IX, of the General Appropriations Bill. To be considered, the proposed team must demonstrate that they have a professional engineer, architect, landscape architect, or surveyor registered in Texas who will sign and/or seal the work to be performed on the contract.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation for the work to be performed under this contract is 10% of the contract amount.

Contract Number: 06-845P5003 - The precertified work categories and percentages of work per category are: 2.14.1 - Environmental Document Preparation (SW3P) (5%); 4.1.1 Minor Roadway Design (30%); 8.1.1 Signing, Pavement Marking and Channelization (20%); 8.2.1 Illumination (5%); 10.1.1 Hydrologic Studies (10%); 10.2.1 Basic Hydraulic Design (10%) and 15.1.1 Survey (20%). The work to be performed shall consist of the preparation of plan, specification & estimate (PS&E) documents to construct various TxDOT Rehabilitation, Rehabilitation & Widening and Rural Freeway projects in Ector, Midland and Martin Counties. Schematics, ROW maps and environmental documents to be provided by TxDOT.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores

Minimum Requirements - The individual members of the Prime Provider shall have satisfactory references for preparing similar P.S.&E. for five separate Rehabilitation or Rehabilitation & Widening type projects following RRR Guidelines.

Preferred Requirements - The individual members of the Prime Provider and all Subproviders shall have satisfactory references for preparing similar P.S.&E. for ten separate Rehabilitation or Rehabilitation & Widening type projects following RRR Guidelines.

2. Project Requirements (Team Capability Experience)

Environmental Document Preparation (SW3P) (2.14.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years.

Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Minor Roadway Design (4.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Signing, Pavement Marking and Channelization (8.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years.

Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Illumination (8.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Hydrologic Studies (10.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Basic Hydraulic Design (10.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Design Survey (15.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

3. Special Project Related Experience of Project Manager and Team Members

Environmental Document Preparation (SW3P) (2.14.1) Minimum of one Registered P.E. with experience developing project level SW3P following TxDOT guidelines and examples. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT guidelines in the past years is preferred.

Minor Roadway Design (4.1.1) Minimum of one Registered P.E. with experience developing projects following TxDOT RRR Design Guidelines to upgrade pavement structures and roadside safety; and Part IV Design Guidelines to develop new roadways. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT RRR Design Guidelines and Part IV Design Guidelines in the past three years is preferred.

Signing, Pavement Marking and Channelization (8.1.1) Minimum of one Registered P.E. with experience developing projects following TxMUTCD, TxDOT BC Standards, TxDOT Standard TCPs, and TxDOT Traffic Signing and Pavement Marking Standards. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT standards in the past three years is preferred. The Project Manager to have five years minimum (ten years preferred) experience developing Construction Sequence Plans with TCP and sequencing layouts.

Illumination (8.2.1) Minimum of one Registered P.E. with experience developing projects with Safety Lighting and/or Continuous Lighting Layouts following TxDOT Guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT Guidelines in the past three years is preferred.

Hydrologic Studies (10.1.1) Minimum of one Registered P.E. with experience developing hydrologic data summaries for projects following TxDOT Hydraulics Manual. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Hydraulics Guidelines in the past three years is preferred.

Basic Hydraulic Design (10.2.1) Minimum of one Registered P.E. with experience developing structure layouts, storm drain design and miscellaneous details following TxDOT examples and guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines and Examples in the past three years is preferred.

Design Survey (15.2.1) Minimum of one individual that has experience gathering and developing engineering survey data for TxDOT projects. Experience in project level surveying and development of engineering data (topographic, hydrologic and alignment/volumetric) of five similar projects for TxDOT in the past three years is preferred.

4. Evidence of Compliance with Assigned HUB Goal

This criteria is either a commitment or not and has no other preferred status. Therefore, a provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: The letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (915) 333-9260, or by hand delivery to TxDOT, Odessa District, Attention: Gary J. Law, P.E., 3901 E. Hwy 80, Odessa, Texas 79761. Letters of interest will be received until 5:00 p.m. on December 12, 1997.

Letter of Interest Requirements: The letter of interest is limited in length to three 8 1/2 x 11 pages (12 pitch font size, single sided pages with no attachments or appendices) and must include contract number 06-845P5003; an organizational chart containing names, addresses, telephone number and fax number of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the provider or subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since precertification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Gary J. Law, P.E. at (915) 333-9212 or fax (915) 333-9260.

Contract Number: 06-845P5004 - The precertified work categories and percentages of work per category are: 2.14.1 - Environmental Document Preparation (SW3P) (5%); 4.2.1 Major Roadway Design (30%); 8.1.1 Signing, Pavement Marking and Channelization (20%); 8.2.1 Illumination - (5%); 8.3.1 Signalization (5%); 9.1.1 Bicycle and Pedestrian Facility Development (5%); 10.1.1 Hydrologic Studies (10%); 10.2.1 Basic Hydraulic Design (10%) and 15.1.1 Survey (10%). The work to be performed shall consist of the preparation of plan, specification and estimate (PS&E.) documents to construct various Widening, Added Capacity, Realignment and/or New Location type projects in Ector, Midland and Pecos Counties. Schematics, environmental documents and ROW maps will be provided by TxDOT.

Historically Underutilized Business Goal (HUB): The goal for HUB participation for the work to be performed under this contract is 10% of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores

Minimum Qualifications - The individual members of the Prime Provider shall have satisfactory references for preparing P.S.& E. (as described in Project Scope) for five separate widening or new location type projects following Part IV Design Guidelines.

Preferred Qualifications - The individual members of the Prime Provider and all Subproviders shall have satisfactory references for preparing P.S.& E. (as described in Project Scope) for five separate widening or new location type projects following Part IV Design Guidelines within the past five years.

2. Project Requirements (Team Capability Experience)

Environmental Document Preparation (SW3P) (2.14.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years.

Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Major Roadway Design (4.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Signing, Pavement Marking and Channelization (8.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years.

Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Illumination (8.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Signalization (8.3.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Bicycle and Pedestrian Facility Development (9.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Hydrologic Studies (10.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Basic Hydraulic Design (10.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Design Survey (15.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

3. Special Project Related Experience of Project Manager and Team Members

Environmental Document Preparation (SW3P) (2.14.1) Minimum of one Registered P.E. with experience developing project level SW3P following TxDOT Guidelines and examples. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines in the past three years is preferred.

Major Roadway Design (4.2.1) Minimum of one Registered P.E. with experience developing projects following Part IV Design Guidelines to develop roadways in an urban environment and roadways in rural freeway environment. Minimum of one Registered P.E. with experience in the development of five similar projects following Part IV Design Guidelines to develop roadways in an urban environment and roadways in rural freeway environment in the past three years is preferred.

Signing, Pavement Marking and Channelization (8.1.1) Minimum of one Registered P.E. with experience developing projects following TxMUTCD, TxDOT BC Standards, TxDOT Standard TCPs, and TxDOT Traffic Signing and Pavement Marking Standards. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT standards in the past three years is preferred. The Project Manager to have five years minimum (ten years preferred) experience developing Construction Sequence Plans with TCP and sequencing layouts in an urban environment.

Illumination (8.2.1) Minimum of one Registered P.E. with experience developing projects with Safety Lighting and/or Continuous Lighting Layouts following TxDOT Guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT Guidelines in the past three years is preferred.

Signalization (8.3.1) Minimum of one Registered P.E. with experience developing projects with Traffic Signal Layouts following TxDOT Guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT Guidelines in the past three years is preferred.

Bicycle and Pedestrian Facility Development (9.1.1) Minimum of one Registered P.E. with experience developing projects with Bicycle Lanes incorporated into the traffic pattern following AASHTO Bicycle Guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed AASHTO Guidelines in the past three years is preferred.

Hydrologic Studies (10.1.1) Minimum of one Registered P.E. with experience developing hydrologic data summaries for projects following TxDOT Hydraulics Manual. Minimum of one Registered P.E. with

experience in the development of five similar projects following TxDOT Hydraulics Guidelines in the past three years is preferred.

Basic Hydraulic Design (10.2.1) Minimum of one Registered P.E. with experience developing structure layouts, storm drain design and miscellaneous details following TxDOT examples and guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines and Examples in the past three years is preferred.

Design Survey (15.2.1) Minimum of one individual that has experience gathering and developing engineering survey data for TxDOT projects. Experience in project level surveying and development of engineering data (topographic, hydrologic and alignment/volumetric) of five similar projects for TxDOT in the past three years is preferred.

4. Evidence of Compliance with Assigned HUB Goal

This criteria is either a commitment or not and has no other preferred status. Therefore, a provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: The letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (915) 333-9260, or by hand delivery to TxDOT, Odessa District, Attention: Gary J. Law, P.E., 3901 E. Hwy 80, Odessa, Texas 79761. Letters of interest will be received until 5:00 p.m. on December 12, 1997.

Letter of Interest Requirements: The letter of interest is limited in length to three 8 1/2 x 11 pages (12 pitch font size, single-sided pages with no attachments or appendices) and must include contract number 06-845P5004; an organizational chart containing names, addresses, telephone number and fax number of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the provider or subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since precertification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Gary J. Law, P.E. at (915) 333-9212 or fax (915) 333-9260.

Contract Number: 06-845P5005 - The precertified work categories and perentages of work per category are: 2.14.1 - Environmental Document Preparation (SW3P) (5%); 3.2.1 - Route Studies & Schematic Design-Major Roadways (20%); 3.4.1 - Minor Bridge Layouts (30%); 4.2.1 Major Roadway Design (10%); 8.1.1 Signing, Pavement Marking and Channelization (5%); 8.2.1 - Illumination (5%); 10.1.1 Hydrologic Studies (5%); 10.2.1; Basic Hydraulic Design (5%); 14.1.1 - Soil Exploration (5%) and 15.1.1 Survey (10%). The work to be performed shall consist of the preparation of plan, specification and estimate (PS&E.) documents to construct Bridge Widening, Bridge Replacement and Interchange projects in Crockett, Midland, Reeves and Ward Counties.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation for the work to be performed under this contract is 10% of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores

Minimum Requirements - The individual members of the Prime Provider shall have satisfactory references for preparing Freeway Schematics, Bridge Layouts and P.S.&E. (as described in Project Scope) for five separate projects following Part IV Design Guidelines.

Preferred Requirements - The individual members of the Prime Provider and all Subproviders shall have satisfactory references for preparing Freeway Schematics, Bridge Layouts and P.S.&E. (as described in Project Scope) for five separate projects following Part IV Design Guidelines within the past five years.

2. Project Requirements (Team Capability Experience)

Environmental Document Preparation (SW3P) (2.14.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Route Studies and Schematic Design (Major Roadways) (3.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Major Roadway Design (4.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Minor Bridge Design (5.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Signing, Pavement Marking and Channelization (8.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Illumination (8.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Hydrologic Studies (10.1.1)Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Basic Hydraulic Design (10.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Soil Exploration (14.1.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

Design Survey (15.2.1) Minimum Requirements - A Team member must have worked on five similar type projects within the past three years. Preferred Requirements - A Team member must have worked on ten similar type projects within the past five years.

3. Special Project Related Experience of Project Manager and Team Members

Environmental Document Preparation (SW3P) (2.14.1) Minimum of one Registered P.E. with experience developing project level SW3P following TxDOT Guidelines and examples. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines in the past three years is preferred.

Route Studies & Schematic Design - Major Roadways (3.2.1) Minimum of one Registered P.E. with experience developing schematics of freeway ramps and interchanges following TxDOT examples and guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines and Examples in the past three years is preferred.

Major Roadway Design (4.2.1) Minimum of one Registered P.E. with experience developing P.S.& E. for bridge approaches, at grade intersections, and freeway interchanges following TxDOT examples and guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT guidelines and examples in the past three years is preferred.

Minor Bridge Design (5.1.1) Minimum of one Registered P.E. with experience developing bridge widening layouts, bridge replacement layouts, and bridge lengthening (expansion) layouts following TxDOT examples and guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines and Examples in the past three years is preferred.

Signing, Pavement Marking and Channelization (8.1.1) Minimum of one Registered P.E. with experience developing projects following TxMUTCD, TxDOT BC Standards, TxDOT Standard TCPs, and TxDOT Traffic Signing and Pavement Marking Standards. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT standards in the past three years is preferred. The Project Manager to have five years minimum (ten years preferred) experience developing Construction Sequence Plans with TCP and sequencing layouts in an urban environment.

Illumination (8.2.1) Minimum of one Registered P.E. with experience developing projects with Safety Lighting and/or Continuous Lighting Layouts following TxDOT Guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following above listed TxDOT Guidelines in the past three years is preferred.

Hydrologic Studies (10.1.1) Minimum of one Registered P.E. with experience developing hydrologic data summaries for projects following TxDOT Hydraulics Manual. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Hydraulics Guidelines in the past three years is preferred.

Basic Hydraulic Design (10.2.1) Minimum of one Registered P.E. with experience developing structure layouts, storm drain design and miscellaneous details following TxDOT examples and guidelines. Minimum of one Registered P.E. with experience in the development of five similar projects following TxDOT Guidelines and Examples in the past three years is preferred.

Soil Exploration (14.1.1) Minimum of one individual that has experience gathering and developing engineering survey data for TxDOT projects. Experience in project level investigation/exploration and development of engineering data (Texas Pen Test (blows/ft), rock quality, and USCS) of five similar projects for TxDOT in the past three years is preferred.

Design Survey (15.2.1) Minimum of one individual that has experience gathering and developing engineering survey data for TxDOT projects. Experience in project level surveying and development of engineering data (topographic, hydrologic and alignment/volumetric) of five similar projects for TxDOT in the past three years is preferred.

4. Evidence of Compliance with Assigned HUB Goal

This criteria is either a commitment or not and has no other preferred status. Therefore, a provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: The letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (915) 333-9260, or by hand delivery to TxDOT, Odessa District, Attention: Gary J. Law, P.E., 3901 E. Hwy 80, Odessa, Texas 79761. Letters of interest will be received until 5:00 p.m. on December 12, 1997.

Letter of Interest Requirements: The letter of interest is limited in length to three 8 1/2 x 11 pages (12 pitch font size, single sided pages with no attachments or appendices) and must include the contract number 06-845P5005; an organizational chart containing names, addresses, telephone number and fax number of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the provider or subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since precertification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Gary J. Law, P.E. at (915) 333-9212 or fax (915) 333-9260.

Issued in Austin, Texas, on November 12, 1997.

TRD-9715099
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 1997

♦ ♦ ♦

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